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THE UNIVERSAL ILLUSION OF FREE WILL AND CRIMINAL RESPONSIBILITY

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I.

About thirty years ago, thanks to the impulse given by Lombroso, a new science has been born and has developed considerably. Little by little criminal anthropology has seen the number of its adherents augment. A complete branch of new literature has sprung up. More than all others the Italians have been active in this new branch, for it is in Italy that this science was born. Under the instigation of the master, Lombroso, a pleiades of medical men and some jurists have devoted themselves to these studies, and numerous researches were undertaken in the different branches of criminal study. The name criminal anthropology continued to be employed, although the new science included much more than anthropology; and psychology, as well as criminal sociology, soon formed part of these studies.

Criminology, that is, the study of crime and of the criminal, was for the first time carried on methodically and on a more or less scientific basis. By this fact it entered into the sphere of scientific research. First in Italy, then in France, Germany, Russia, Belgium, the United States, and at last in England, there arose men of learning devoted to this science.

One of the causes, and that not the least, which led to the rapid development of scientific criminology was the audacity of the conclusions boldly announced by Lombroso and his disciples. They clashed with all the preconceived ideas. Consequently they attracted attention. Although very frequently false, or sometimes premature, these startling conclusions have had the signal merit of advancing the scientific study of criminals. It will be to Lombroso's lasting honour to have thus given a powerful impulse to studies fallen into oblivion. For, in fact, in this century some scientists had expressed some ideas, defended afterwards by the Professor of Turin. He has drawn these studies into the light of day. He has made such deep research into this branch of science,

hardly existing before him, that one may say he has created it. It gives me all the more pleasure to recognise the great importance of the teachings of Lombroso—whom with many other criminologists I esteem, notwithstanding that many of his deductions are false or exaggerated. I think he often is lacking in critical judgment.

In the course of the complete treatise on criminology which I am preparing, and to which this essay is intended as an introduction, I believe I shall have sufficient opportunity to show this to be the case. Whoever has read his works will have noticed immediately how insufficiently the mass of facts given have been elaborated or digested. Very frequently the facts noted are not verified. And too often, it has happened that their non-existence or their inaccuracy could be proved. Lombroso's disciples, principally the orthodox among them, have the same faults, but in a much less degree.

The student of criminological science quickly becomes aware that a basis is lacking in criminology. I mean a basis which permits of comparative study in Time and in Space. He sees that there is no definition of crime, or rather that there is a multitude of them, eminently differing from one another. Criminologists have not come to an understanding as to the definition of crime, that is, of the subject which they explore, and of which they treat. Already, in 1892, I remarked that the divergence in terminology arose often from the divergences in the conception of the criminals. And I then wrote* what we may still maintain to-day:—

"The difference which exists between crime as considered scientifically and as considered juridically often gives rise to false systems propounded by superficial thinkers. In fact, nearly all criminologists, to establish their theories, base them upon the statistics drawn up by the various penitentiary and judicial administrations. Now necessarily these statistics include only judicially condemned criminals, and none of all the authors of anti-social† acts, which the law does not recognise as crimes. Even the sociologist, who carefully examines social phenomena, can, without fear of being contradicted—for the proofs abound—affirm that numbers of judicial criminals do

* *Crime et Criminalité*, an article in the *Almanach de la Question Sociale for 1893*. Paris, 1892, in 8vo.

† At that time I considered crime as an anti-social act, in accordance with Dr. Corre. I considered the two expressions synonomous.

not enter into these statistics at all, for the simple reason that they are not disturbed, but are often highly honoured. Hidden crime far exceeds prosecuted crime, but to my knowledge no criminologist, with the exception of Dr. Corre, has testified to this striking truth.* From this it results that the statistics have only a relative value, and that the learned deductions drawn from them are also only of very relative value. Criminologists in general to-day consider anti-social action is exceptional, when in reality it is the rule; and it cannot be otherwise, for all our social organisations tend to make it so. The honest man, as Professor Albrecht has said, considered anthropologically, is an *anomaly*. It is the criminal who is normal. The most casual observer can easily perceive that anti-social action is much more frequent than social action, and that consequently the anti-social man is quite the rule and the social man the exception. Taking one's stand upon sociological considerations one may say: The criminal is normal and the honest man an anomaly. I defy the refutation of this assertion if, by criminal, is meant the author of an injury to the community or to an individual.

"Evidently all anti-social acts are not of the same significance, they are not identical. They vary as greatly as their authors, and it is this variability which misleads the criminologists. In fact, they study only certain manifestations of anti-social action, those who in our present state of civilisation most offend the sentiments of the average human being. They forget to study the other manifestations of crime, manifestations far more serious than the preceding, though not appearing so, because the habit of seeing them perpetrated prevents us from perceiving how injurious they are. Everybody may convince himself of this by running through newspapers or reviews of every kind, or reading the works of sociologists of every shade of opinion. From this fact it appears that the generality of criminologists study only what I might describe as exceptional crime. Monstrous crimes interest them; and they study their authors, deducting from this study anthropological and sociological considerations which they proceed to apply to the generality of criminals. Thus Lombroso has established his criminal human type, basing his conclusions upon the dozens, hundreds, or thousands of individuals, the judicial criminals, whom he has observed and measured in the prisons. To obtain a standard of comparison he examined and measured so-called honest individuals.† Now what can prove that these judicially honest individuals were not anti-social in the highest degree? Evidently nothing. And as the observation of social phenomena shows the frequency of anti-social action, and consequently the great number of the authors of such action, we can maintain, without probable error, that a good many of the honest people, examined by Lombroso or his disciples, to serve as standards of comparison, could not so serve because they were themselves anti-social. The inhabitants of the prisons and convict stations for a profound analyst of society do not appear more anti-social than a great number of our free population. An alienist and criminologist, M. Marandon de Montyeul, has thus written:— 'Each of us bears in his brain a sleeping criminal proclivity, the awakening

* Since the above was written, MM. Manouvrier and Deblerre have noted the fact.

† A list of these is formed from the soldiers who died at Solferino! Lombroso considered these as normal, honest subjects. The measurements of their skulls served him as a standard of comparison.

of which depends in part upon his lethargy, in part upon the degree of exciting influences acting upon him, so that the delinquent of to-morrow, according to circumstances, may be perhaps you, perhaps I."* M. Marandon gives to the term criminal the signification which more exactly applies to a monster of crime. How much truer is the thought that the word criminal signifies the author of an anti-social act. We may even say in this case that the criminal proclivity does not sleep in the brain, but that it is very wide awake.

"From this sketch it follows that the anthropological or social conclusions which the criminalists draw from their studies of judicial and penitentiary statistics, from the examination of the inhabitants of prisons are from the very outset very defective. They are based upon the exceptions and not upon the generality of authors of anti-social acts. I do not mean to say that all their conclusions are false, they may contain partial truth, especially concerning the study of factors arising from social or cosmic surroundings. In fact, the legal criminal can in this case be justly considered as an anti-social specimen, on whom the social and cosmic surroundings act, in the same conditions, the same as upon the generality of secretly anti-social individuals. On the contrary as to the individual factor, the conclusions drawn by the criminologists are vitiated for the want of accurate terms of comparison; hence results that one cannot generalise and establish a single criminal type, the most that one can do is to establish several criminal types.

"In the opinion of contemporary criminologists, three causes productive of crime are recognised: the nature of the individual, the social and the cosmic environments. By individual nature they mean the cranial, cerebral structure, the temperament, the structure of the body—in a word the formation of the entire physical organism. By social environment they mean the education, instruction, manners, and customs of the surrounding society, the economic, intellectual, and moral conditions of life. By cosmic environment they mean the temperature, the hygrometrical and electrical state of the atmosphere, the nature of the soil where the author of the anti-social action lives."

Crime is generated under the influence of these three factors. The free will of the meta-physicians is therefore denied by the criminologists. Logically they deduce the irresponsibility of criminals. Nevertheless, many criminologists concede the mitigated penal responsibility, if not the full responsibility of the delinquents. I do not speak of civil responsibility, for certainly our sense of justice would be considerably offended if the author of an injury to another individual or to the community *were able to repair* the injury and did not do so.

The lack of logic on the part of criminologists arises from the fear they have for the future of society if the irresponsibility of all criminals could be proved. Social teleology impairs the aim

* *Archives d'Anthropologie Criminelle*, 1892.

of the scientists. The suppression of penality would lead in their opinion to the over-production of crimes. This it is which frightens them, and then the man of science is effaced by the citizen, the bourgeois, the socially privileged individual. It is not the fault of the criminal, as M. Dubuisson has substantially said, that he is born bad, and that he has been conduced to crime, but he must be punished, he has to be chastised to satisfy society, because repression is legitimate.

By this rapid survey of criminology we see how faulty its scientific teachings are. We do not speak at all of the studies emanating from classical criminologists who have, so to speak, nothing in common with science. We mean to treat only of the criminology taught by the positive Italian school and its rivals more or less differing from it. The numerous treatises written by Lombroso, Ferri, Colajanni, Corre, Havelock Ellis, Debierre, Garofalo, Tarde, hundreds of studies specially written by a number of scientists in Italy, France, Germany, Russia, Spain, and Great Britain all testify to numerous shortcomings. Only one kind of criminal, viz., those called so by the law, have been examined. The criminologists have trodden in the steps of the police, in the words of M. Manouvrier, and it must be confessed that this is a somewhat primitive proceeding for psychologists. Secret crime, that is to say, that which escapes legal repression, whether because it is lawful or because the author is beyond the reach of the law, secret crime, I repeat, is very much more frequent. The study of it would modify scientific criminology almost completely, especially in that which concerns the factor of individuality.

With reference to responsibility and penology among the adepts or rivals of the Lombrosian school none have been logical to the end of the doctrine. While some retain responsibility still, although rejecting free will, others have kept the terminology, without keeping its meaning and not daring to acknowledge the change. And this has led them into multitudes of errors. Instead of speaking of social reactivity, of the treatment and the therapeutics of crime, they occupy themselves only with punishments, penalties, and the empiric repression of crime. And this has perpetuated false ideas and theories.

The sight of these various shortcomings in scientific criminology

has suggested to me the idea of making good these deficiencies. It seems to me a logical treatise on criminology would be well accepted by the public interested in these subjects. To digest the matter it is necessary to be sufficiently objective, sufficiently freed from prejudice, and to draw conclusions with as much indifference and *sang-froid* as if we were studying histology or bacteriology. It is necessary also either that one should be in an independent position, or of a very independent character, defying inconveniences to give free expression to scientific truth without the fear of shocking public opinion. In short the student of this important subject must be without a preconceived social aim.

I believe that a functionary in any official position, a professor of medicine, or an official at a public school, could not fulfil the conditions necessary to write a complete and independent treatise on criminology.

In May, 1897, I delivered at the New University of Brussels a series of lectures which serve as an introduction to the all important subject of scientific criminology, and I will here recapitulate the principal questions which I endeavour to answer. Is man free or not? What is crime? What is the process of its evolution? Upon what is this process based? Such questions occur to the student, who wavers between the theory of Determination and Free Will or Responsibility.

The question of "Free Will or Determination" according to Fouillée is *the* philosophic problem *par excellence.*

All sciences dealing with human effort and human duties are based on this question upon which our social edifice seems to rest.

The adoption of the "free will" theory or of the theory of determination must necessarily influence every social problem.

One of the most important branches of criminological science, that of responsibility, penality, and the repression of crimes and misdemeanors, is completely changed according to whether free-will is admitted or not. At the threshold of criminology, therefore, it is important to examine this philosophic problem, to have our conception on this point well established.

For centuries upon centuries free will and necessity have been discussed. Philosophers and theologians have heaped volumes upon volumes, the one side holding to free will, the others, pro-

tagonists of the doctrine of necessity. The Stoics, Manicheans, Marcionites, Priscillianists, Calvin, Jansenists, and Thomists were of the latter opinion, while Epicurus, the Molinists, Melancthon, and many more defended the doctrine of free will. Historians and poets, Latins as well as Greeks, have invoked inexorable fate at every instant, the will of the gods as the cause of human acts. This is, in fact, to deny free will. St. Augustine, the great Catholic doctor, broke lances over the subject of Grace, and proclaimed: "Man is invincibly destined either to bad by his natural corruption or to good by the Holy Ghost." And Bayle was able to draw from the doctrine of Chrysippus that: "At bottom, all acts of human will are the inevitable consequences of destiny."* And Voltaire clearly affirms the truth of determinism in his explicit and characteristic language: "Liberty," said he, "is nothing else than to be able to do that which I desire. . . . Your will is not free, but your actions are. You are free to act when you have the power to act."†

All these discussions, whether for or against free will, are based upon *à priori* arguments. To combat or defend determinism, the rational method was the only one employed. The introduction in science of the experimental and observational method has come to modify considerably the situation of the philosophers. The experiment has brought about a veritable overthrow of preconceived ideas since during the last quarter of this century psycho-physiology has taken rank among the sciences.

The Greek and Latin philosophers, the fathers of the church, the doctors of the Reformation, and the philosophers of modern times based their opinions only upon their reason, whether they sustained or refuted free will. Now, facts observed, experimented upon, with the inevitable deductions, have come to throw light upon the problem. They enfeeble, reduce to nothing, the argumentation in support of free will, while sustaining, affirming, and imposing the doctrine of determinism. Even Fouillée, although impressed by philosophic classicism, has avowed that: "In the end, it is determinism which is true."‡

* Bayle's *Dictionary II*, p. 466a. Edition, Amsterdam, 1734.

† *Dictionnaire Philosophique*, article "Liberté."

‡ Fouillée. *La Liberté et le déterminisme*, 4th edition, preface vii, 1895.

Although positive science has demonstrated, and, in our opinion, without the possibility of refutation, that determinism is the truth, classic philosophy has always been for free will. It is this which is officially taught. Determinism is only spoken of to assert that it is false and to give an appearance of refuting it. Then, all or almost all of us have been nourished upon this idea that man possesses free will. This fact explains how difficult it is for us to divest our minds of this conception, which is false because it is in contradiction to all human phenomena. This impression upon our brains is such that a young advocate recently avowed: "Yes *theoretically* determinism is true; but *practically* it is not. It is sufficient to see the delinquents of the police court to be persuaded of it." The professional environment had thoroughly awakened in him the ideas received during his classical education. This prevented him from analysing to the end these delinquents, and consequently of perceiving their lack of free will.

What then is free will or moral liberty? By turns each of these different terms have been employed in the same sense.

In many parts of his dictionary Bayle gives us the explanation of free will (franc-arbitre). He writes: "Those who hold with free will properly so-called, admit in man the power to decide between turning to the right or to the left, even when the motives are perfectly equal as regards the two directions opposed; for they pretend that our spirit can say, without having other reason than to make use of its liberty: I like this better than that, although I see nothing more worthy of my choice in this than in that."* And Bossuet, in his *Traité du libre arbitre* has said that moral liberty belongs to man, because he can choose or not choose, without other motive than his own will. Also in the abstract of philosophy used in the preparation for the B.A. degree we read: "Moral liberty or free will is the liberty of our will in itself."†

This definition is somewhat obscure, and truly tautological. It indicates the necessity for a clear definition of will. Now, for this, the same abstract says: "Will is the power to decide, inherent in the human soul."‡ Hence it results that free will is the liberty to

* *Op. cit. II.* a. p. 207

† Brisbarre. *Precis de philosophie*, p. 113, Paris, 1876.

‡ Brisbarre. *Op. cit.* p. 100.

be able to decide. In other words, free will is free will. Such is the lucid manner in which the classical abstracts of philosophy tender definitions. However tautological and obscure these explanations may be, it is nevertheless certain that moral liberty is, according to its partisans, the inherent faculty in man to choose, without having any reason whatever for one choice more than for another.

In short, as M. Enrico Ferri has written, free will implies that "in spite of the continual and multiform pressure of the exterior environment, and the internal contention of different motives, the decision in the last resort, between two opposed possibilities, belongs exclusively to the will of the individual."

It is evident, the basis upon which the conception of free will rests is the will which, according to classic philosophy, is a faculty of the soul. It is "the power to decide, an abstraction made (in theory) of all the circumstances which could have provoked it, and of the possibility or impossibility of carrying out that which one has decided."* The existence of this power is *only* proved by the consciousness that we have of it. We feel, *so we know, with scientific certainty*, say the standard works, that we are masters of ourselves, and that we can say equally well, *I will, I do not will*, or *I will the contrary.*

The consciousness that man has of his free will is the only argument used by the champions of free will. This is a veritable sophism. Even to-day the few scientists defending this view still have recourse to it. They say: "In the name of an auto-observation, bereft of all apriorism, it is easy to observe that the normal man, in a state of full mental activity, has in himself the impression, the consciousness that he can resist or give way to solicitations which lead to good or evil. . . . This sense of moral liberty is a natural attribute to the human organisation. . . . Thus free will forms normally a constituent part of the natural attributes of man's mentality, whose progress, oscillations, and decline it follows. We feel our will act in its complete independence, in the midst of the varying solicitations which provoke it, of the trials our reason subjects it to, it makes this decision

* *Ibid*, p 110

prevail at its own pleasure, a decision agreed upon in advance, or another, quite different and opposed to the first, proffered spontaneously by the mind. Now, can it be that this moral liberty of which man has such full, sincere, and universal consciousness, is but a mental delusion? We cannot think so, and we affirm confidently free will exists."*

There is no need to dwell upon the curious nature of this free will, a fraction of the mind, on the one hand entirely independent, on the other, progressing and declining, oscillating with this mind! It is useless to linger over this free will which is sometimes an entity, having an independent existence, at its pleasure making anything whatever prevail, sometimes an attribute of the mind, consequently determined by it, since it is one of the properties of this mind! Without showing how these assertions contradict one another, how obscure they all are, we will confine ourselves to stating: The universal consciousness that man has of his moral liberty is its only proof. Now, here, we say, lies a mere sophism. It is to admit as proved that which is to be proved.

We are conscious of the power to decide, without taking the causes into consideration, hence we know with scientific certitude, that this power exists within us. Such is the reasoning of the defenders of free will. Now the consciousness that we can have of a phenomenon, does not prove its existence. All of us are conscious that the sun goes from east to west, it would nevertheless be a great error to conclude that: Therefore the sun really goes from east to west, turning round the earth. For a long time it was believed that the consciousness of this cosmic phenomenon proved its existence. To-day we know with certainty that it is not so at all. For many other phenomena, the consciousness that we have of them is deceptive and not at all a proof of their reality.

In the hypnotic state the perceptions are deranged. One can have, one has, an exact, precise and genuine consciousness of unreal phenomena. Suppose A. is in the somnambulic state. If you tell him that Mr. X. is Mrs. Z. then A. sees Mr. X. and takes him for Mrs. Z. He acts with X. as he would act with Mrs. Z. He is conscious of seeing, hearing, and touching Mrs. Z., and nevertheless

* B. Pailhas, *Archives d'Anthropologie Criminelle*, p. 130. March, 1897

it is Mr. X. whom he really sees, hears, and touches. His consciousness deceives him. He is conscious of a non-existent phenomenon. What is hallucination, if not the consciousness of unreal phenomena? Let us remark that hallucinations can be collective, and perceived by crowds of people. We could accumulate volumes of proofs showing that in certain psychic conditions human beings can have consciousness of things that do not exist at all. The reader of the works of MM. Beaunis, Binet, Bernheim, Liégeois, etc., will know of a bewildering wealth of such instances. With good ground M. Tarde has remarked hypnotism cures us of the illusion of free will. "The awakened hypnotic subject who under the persistent impression of an order received in his sleep, steals a watch, or strikes one of his friends, believes himself free to act in this manner, and bases his reasons upon the false pretexts which his imagination furnishes as justification to himself for his absurd act. Thus he appropriates delusively the initiative which has come to him from a foreign source."* Hypnotism proves experimentally the inanity of the only argument of the partisans of free will.

Frequently, at every instant, indeed, it happens that phenomena exist without our having any consciousness of them. The celebrated experience of Chevreul of the compensating pendulum is a striking proof. This "proves how easy it is to take illusions for realities, whenever we are occupied with a phenomenon where our organism takes some part, and in circumstances which have not been sufficiently analysed" (Chevreul). We know the experiences of Cumberland and Slade, based upon the conscious, or even the unconscious, perception of unconscious movements.† The majority of men do not possess colour-hearing. Very few are those with whom the impression of colour is associated with the sense of taste or smell. Of these phenomena the greater part of humanity have no consciousness at all. For this reason, many are inclined to deny them. From the unconsciousness of certain phenomena they conclude that they are non-existent, although they do exist. Introspection is a matter for study and analysis, which certainly should not be neglected. But it is necessary also

* G. Tarde. *Philosophie penale*, p. 192.

† A. Binet. *Les alterations de la personnalite*, p. 210. Henri Nizet. *L'Hypnotisme*, p. 125.

to take care not to depend upon it only in order to deduce the existence of diverse entities.

The fact that man has universally, clearly, and sincerely the consciousness of his own free will, does not prove, and cannot prove, the existence of this free will. In order that it should prove it, it would be necessary to show first that: to have consciousness of a phenomenon is proof sufficient of the reality of this phenomenon. We do not think that this demonstration is possible, so much does observation contradict it. It is then illogical and irrational to synonymize, "feeling that one is master of oneself" and "knowing that one is master of oneself."

It may be—and in reality it is so—that moral liberty may be a product of cerebral activity. Man not knowing all the causes which influence him, has believed that he was free. He has raised this liberty into a dogma, in the same way as he had raised the movement of sun round the earth into a dogma, and as he believed in human beings possessed by the devil, seeing the dual nature of our personality. Like the idea of God, the idea of free will is a product of the human mind which by degrees has developed in his brain. No more than God is free will a reality. It is an illusion pure and simple. Locke was perfectly right when he said that the general assent with which the doctrine of free will was held was a pure illusion resulting from ignorance of the causes which make us act.

But supposing we admit, with the partisans of free will, that this consciousness of moral liberty necessarily implies its existence, we must see whether all men do possess this consciousness. Already two centuries ago, Bayle very truly wrote: "Those who do not profoundly examine that which takes place in themselves easily persuade themselves that they are free and that if their will leads to evil, it is their own fault, it is owing to a choice over which they are masters. Those who form another judgment are people who have carefully studied the springs and the circumstances of their actions, and have well reflected upon the progress of the movement of their soul. These latter people generally doubt their free will, and arrive even at persuading themselves that their reason and their mind are slaves which cannot resist the force

which draws them on to where they would not go."* Moleschott has given the same testimony.† To an adversary he replies, that he was conscious of not having a free will. He was, on the contrary, conscious of being limited. Elsewhere also, every day the number of persons increase who are conscious that they are not free to will or not to will. The only argument on which the doctrine of free will rests is then destroyed even by the observation of facts.

We have considered the one argument in favour of free will. And, indeed, we cannot find any other. For it is evidently quite impossible for us to consider such assertions as the following as serious arguments:—

"It is not necessary to believe that the springs of action (desires, predispositions, instincts) exercise an irresistible influence; not only because that would be dangerous, but because the facts agree with morality in proving the contrary. It would be a too convenient excuse to be able to throw oneself always upon one's passions and one's constitution. Reason and will have been given us just that we may master them, when they threaten to lead us into evil. It is not because one motive is stronger than another that it produces a certain resolution of our will; it is because our will decides for itself, that it finds itself effectively the stronger."‡

Let us confess that all this is mere verbosity. What is meant by morality in this explanation? What are the facts that prove the liberty? Will becomes an entity, having an existence of its own, and not subjected to any influence! Indeed one is amazed to see free will taught on the strength of such feeble arguments. All this pseudo-argumentation resolves itself into gratuitous assertions, into a mere begging the question.

But that which, more than all else, ruins the system of free will is the analysis of the nature of the process of the voluntary act.

To understand this process we must see how ideas in their entity are formed, what they are and how our acts are decided upon. It does not belong to the subject here discussed to give a course of psycho-physiology of the mind. So we cannot and ought not to explain the formation of ideas, the manner of cerebral activity. For this demonstration we refer our readers to the works of E. H. Weber, Fechner, Helmholz, Dubois Reymond, Wundt, Herbert

* *Op. cit. III*, p. 262 a. b.

† *Actes du 1er congrès d'Anthropologie Criminelle*, 1886.

‡ Brisbarre. *Op. cit.*

Spencer, Bain, Taine, Maudsley, Marey, Beaunis, Herzen, Charcot, Manouvrier, Laborde, Ribot, and many others. Our province is simply to explain the state of the question as it stands as a result of the researches of contemporary psychologists and physiologists.

These researches have given an experimental basis to the mechanical cerebral action. The brain is the thinking substance. Without it, without this substratum, mind does not exist at all. As M. Debierre has described it, "the one is bound to the other by an indissoluble marriage." Corresponding to derangements of the psychic functions there are material injuries in the brain. Cerebral hemispheres and intellectual faculties develop simultaneously. "Science shows in an absolutely certain manner the fact of the simultaneousness and constant and necessary correlation of nervous vibration and mental activity. It proves them to be two inseparable phenomena, each of which cannot take place without the other."*

It is in the organs of sense that the psychic life of men and animals commences. "Its perpetual flow bursts out by the mediation of the organs of movement," says M. Griesinger, "the type of the metamorphose of sensitive irritation into propelling force is reflex action with or without sensitive perception."

What is this reflex action which really constitutes the great mechanism of the nervous centres? We cannot do better than quote what has been written on this subject by Professor Debierre: —

"Reflex action is essentially constituted by a propelling reaction, whether automatic and unconscious or voluntary and conscious. It is included in the following phenomena: —

"I. External impression, or reception of external movements by the sensitive organs.

"II. Centripetal transmission of a shock by the intermediation of the centripetal or sensitive nerves, which bind the periphery with the nervous organic centres.

"III. Internal reaction, or reflection of the shock received by the nervous elements of the centres, whether consciously or not.

"IV. Centrifugal transmission of excitement by means of the centrifugal or motor nerves which bind the nervous centres to the muscles.

"V. External reaction or restitution of energy received (muscular movements, gestures, speech, etc.)."

* Debierre. *Le crâne des criminels*, p. 376.

The nervous centres have for their functions to restore, to give back, under the form of propelling impulsion, the tensitive impression received from without. The mechanism is extremely complex; the energy received is returned at once or after the act of storage, but it is reduced in strength. From outside the organism is affected only by movement; sonorous undulations; luminous or caloric vibrations; chemical movements (tastes and smells); various movements registered by the touch. The reaction of the organism on these impressions differs according to the quantity, the nature, the tension or the association of these movements. It differs also according to the state in which the organism happens to be. Therefore the internal or external reactions resulting are infinitely varied. The sensations, various as are the impressions producing them, constitute the internal reactions. When these reactions are conscient, they are accompanied by reflex sensations (associations of reflex movements) which are called imagery, representations, memories, ideas. The external reactions are produced by a series of muscular movements, a series as varied as the automatic, instinctive, and voluntary actions of living beings (Herzen).

Then, all impressions shock every element of the nervous centres. This shock is communicated to all the other elements or only to series. Hence results either a reflex sensation which gives place to a psychic reaction, or to an unconscious reflex action. Reflex sensation is conscient. The following plan, taken from a work by Dr. Debierre, will make the mechanism of cerebral activity clear:—

1 is the sensitive or sensorial surface which receives the impression. The latter is conducted by the sensitive nerve a towards the reflex medullary centre b (spinal marrow, elongated marrow), the centripetal current. From this nervous centre b flows a centrifugal current, following the motor nerve c. The propelling reaction is produced by 2, the organ of movement. The movement thus accomplished is unconscious. Instead of stopping at the centre b, the centripetal current can continue, following the sensitive nerve d and reach a cerebral centre E, which is conscious (the brain). From this centre E across f, the conducting nerve of motricity, flows a centrifugal current which shocks the medullary centre b. The latter, in its turn, acts upon the muscle 2, by the motive nerve c. This is voluntary conscious movement.

"Incessantly the brain receives a flow of centripetal nervous vibrations. Incessantly it gives back a flow of centrifugal vibrations" (Herzen).

But between the reception and the action there is always an

internal operation. There are reflex sensations of the association of ideas constituting the very basis of mental activity. With the reflex sensation, the movements are conscious, voluntary, more or less limited by the judgment, as are the greater part of the cerebral reflexes. Without this reflex sensation, the movements are automatic, mechanical, like those of the medullary reflexes (Debierre). In a word, reflex sensation is the indispensable condition, necessary to the psychic state.

Mental activity is always accomplished in the midst of the nervous elements. This activity is nothing else than molecular movement; it is a question of mechanics. A transmission and a modification of an exterior impulsion, and this is what mental activity really consists of. The cerebral work is a form of energy. Thought has chemical equivalents, thermic and mechanical, as many physiologists have shown, notably Broca, Schiff, Paul Bert, Lombard, Tanzi, and Mosso. Do we not know that the latter has demonstrated that cerebral fatigue is of the same nature as muscular fatigue? And M. Debierre has justly said: "In psychology, as in physics and physiology, the work produced can only equal the forces put into play; this is the same as to say that the forces do not create themselves, but that they are only transformed."

The positive work of the brain, like that of the muscle, depends upon the process of molecular disintegration and reintegration. And one might say with J. Soury: ideation, volition, etc., have their source and their cause in molecular mechanics.

The organ of thought is the brain. Without the brain there is no function, that is to say, no sensation, no memory, no volition, no ideas. Cerebral activity is either conscious or unconscious. The field of unconscious activity is of much more importance, much greater than that of conscious activity. In the field of conscience only a few manifestations take place—sensation, memory, ideas—of the cerebral activity which comprises quite a collection of manifestations. In all psychic processes some of the links of the chain escape us. It is without our knowledge that most of the phenomena take place in us. But even those of which we have no consciousness can act as excitants upon other centres of cerebral activity. They may thus "become the *unknown* point of depar-

ture of movements, ideas, decisions of which we are conscious" (Beaunis).

Physical activity, in its different forms, always terminates finally in a propelling reaction, whether voluntary or automatic, conscious or unconscious. It returns thus, under more elementary forms, as mechanical action, into the exterior world.

Volition and the voluntary act are manifestations of mental activity. Since we know the mechanism of the latter, we shall easily understand what will is and what the cause of the voluntary act. Here again we must limit ourselves to stating and alluding to the proofs, referring to the works of Spencer, Ribot, Herzen, Manouvrier, and Laborde.

An act, whether voluntary or automatic, is only the end of an uninterrupted series of mechanical phenomena. The individual is impressed by phenomena by means of his senses. Hence results as we have seen (fig. I.), a centrifugal nervous current. In the case of a reflex action this current has provoked a reaction in the cerebral centres before arriving at, or even without arriving at the encephalos. Perception, if it takes place, then follows the reaction. A centrifugal current, departing from one or several centres has made the individual act, before he had any sensation. It is, as I said, the reflex movement which is evidently automatic.

It happens that the nervous centripetal current arrives at the cerebral centres, without having provoked any reflex movement on its way. Then these impressions or sensations received are presented in various forms, exciting cerebral elements which make new representations arise. The remembrance of old sensations is associated with the new sensations. This constitutes the motives or series of motives, among which there is conflict. In this conflict of motives one of them, or a series of them, predominates, and this is what we call choice. All these cerebral phenomena are naturally accompanied by the disintegration and reintegration of the molecules which provoke a centrifugal nervous current, of which the termination is the execution of an act by the organs of the individual.

If all this process takes place without the individual being conscious of it, without his having any knowledge of the strife between the motives, of the predominance of one of them, or even

of the act resulting, the act is purely and simply automatic. The specific quality of a voluntary act is that it is conscious. The individual is aware of the sensations received, of the remembrance of former sensations, of the motives which are in conflict, and of the predominance of one of them. We have then quite a series of states of consciousness more or less strong; some may be even very feeble, hardly perceptible. Will is the state of preponderating consciousness which is, at the same time, according to Manouvrier, the lively representation of an act and the beginning of a centrifugal current which will produce an act. Physiologically, adds this same scientist, will is a propelling tendency either resultant or predominant, a nervous intra-cerebral tension in a given centrifugal direction. Will is not an entity or faculty. It is an element in the process of an act. Representing this process by an arc, going from the impression to the action, will is a particular point in this psycho-motor chain, at the end of the sensitive portion and at the beginning of the propelling portion. This point represents the section where the impression is transformed into mental action.

Will is an effect. It is the final state in a series of states of consciousness which precede action. It is the effect of the preceding states of consciousness, but it is the cause of voluntary action, "for these acts result from muscular contractions caused by centrifugal nervous currents, the origin of which is to be found in central molecular disintegration which physiologically represents the will" (Manouvrier). Like all phenomena in any process whatever, will is the cause of phenomena which follow in the same manner as it itself followed preceding phenomena. In the words of M. Ribot, the "I will" does not constitute or create a situation; it reveals one. Will is not a faculty or entity, it is the conscious mental representation of an act before its execution. It is a more or less vivid state of consciousness, consisting in a representation of movements with the tendency to execute them. It is after all the more or less distinct image of an act. Manouvrier has shown that this image possesses a physiological value, for it constitutes a tendency to the execution of the imagined act.

Will is preceded by a cohesion of motives, and by deliberation, this complex production of all the states of arising consciousness.

Will has no influence either upon the cohesion of the motives, or upon the deliberation. On the contrary, it is dependent upon them. Sentiments and things imagined tend to pass over into action. We have in the voluntary act, as Ribot remarks, only an extremely complicated case of the law of reflex-action. In the case of the voluntary act between the so-called period of excitation and the propelling period, appears an important psychical phenomenon, will, that is to say, a state of consciousness—showing that the first period has finished, and the second commenced.

The reflex act and the automatic act are unconscious, the voluntary act is conscious. There is quite a series of acts known under the name of impulsive acts, which participate in these two states at the same time. They are in part conscious and in part unconscious. A certain individual at the sight of a baby is irresistibly urged to kill it. He is conscious of this impulsion, and, in order not to succumb to it, he seeks the company of others, because by himself he finds that he has not the power to restrain himself. Whether he finds refuge with others or not, he has cerebrally accomplished the act. In the genesis of this act, we note an awakening impression and quite a series of motivating ideas *(d'idées motifs)*. There is conflict between these mental suggestions and the determination to act; all this process is unconscious. But the image of this act awakes other cerebral centres and produces molecular disintegrations. Other suggestions arise and conflict with the first tendency. This second process is conscious. When the act is accomplished, in contradiction to the suggestions of the second conscious process it is because the first series of suggestions has overpowered the latter. The act is impulsive, notwithstanding that it is in part conscious. It may be that the conscious state is very feeble, not existing at the moment of the perpetration of the act, and that is only produced afterwards. One might say that the impulsive act is the termination of a series of conscious and unconscious phenomena, not hierarchically co-ordinated, but in which the latter predominate. The voluntary act also terminates in the same series of phenomena, but the conscious ones predominate. Whether their acts be conscious or unconscious, impulsive people have a sort of paralysis of will. This is the result of the absence of hierarchic co-ordination of sensa-

tions, images, and suggestions in the psycho-motor process. The act is without subordination.

In short, all psycho-physiological processes leading to any act whatever may be reduced to the following order:—

The physical phase: the impression made by external or internal causes upon the individual impressed.

The physiological phase: the impression received provokes vibrations on one or several nervous networks (sensitive nerves); this sets up a centripetal current terminating either (1st) in nervous centres (spinal cord), (2nd) in cerebral centres. The vibrations in these centres provoke centrifugal vibrations going towards the periphery, through one or several nervous networks. In the first case (of nervous centres) the movement is reflex; in the second case (of the cerebral centres) the movement is automatic and impulsive, or voluntary.

The physical phase: muscular mechanical movement for the execution of the act determined by the centrifugal current (reflex action, automatic impulsive action, or voluntary action).

Vivid states of consciousness accompany only voluntary acts.

In impulsive action the state of consciousness is feeble, or even does not exist until after the accomplishment of the act. It follows the act instead of preceding it.

II.

Only when an act is performed consciously then the idea of free-will is discussed by its partisans. When the agent is conscious of the act he commits—and there is more consciousness the longer his deliberation lasts—he seems to himself to be free to will or not to will the act. This is the illusion of free will. It is in this sole form of the conscious act that the defenders of the idea of free will have seen, or supposed that they have seen, this liberty.

This supposition is inadmissible. In fact, when we consider the psycho-physiological process, in the way we have above explained it, according to the present condition of our knowledge, we find that there is no element whatever of liberty in the determination of an act. Every act is an inevitable consequence of the series of phenomena which preceded it. The intensity, the tension of the centripetal and then of the centrifugal current depends directly or indirectly upon the special condition of the percipient, and upon the quality and nature of the impressing phenomenon.

Ex nihilo nihil. Nothing comes from nothing. Now moral liberty existing in man, beyond the reach of all influences, necessarily supposes the action of a first cause, of a spontaneous creative power, as Tarde puts it. And this first cause is caused by nothing! Is born of nothing! Then it follows that something comes of nothing, which is absurd.

In admitting the hypothesis of free will, we must admit, in the genesis of the act, the presence of a vague something which intervenes at a given moment, to modify that which will result from all the preceding conditions this *vague something being itself the result of nothing.* In a word, we must admit an effect without a cause. Here we have an absurd conception; therefore the liberty to will is purely and simply an illusion. "To say that the will decides of itself does not represent any idea at all, or rather it implies an absurdity: that a decision which is an effect can produce itself without any kind of cause" (Priestley).

We have ascertained that there are no effects without causes. Innumerable observations, all testifying to the same fact, ***that no effect without causes***, have led to the formulation of the law of natural causality. To defend the hypothesis of free will is to admit that quite a series of phenomena form an exception to this constant relationship, which is found to exist between any phenomenon and those in the process which precede it; it is to admit that a phenomenon is not the necessary effect of other preceding phenomena, or that an effect is without cause; that causes have their effect altered, modified by a "faculty" that one cannot conceive. Consequently to uphold free will is to suppose the existence of an inconceivable entity in contradiction even with the relation which unites phenomena with one another; the necessary relation of cause and effect. An hypothesis which explains nothing, but which implies something inconceivable, is useless and absurd.

The observation of natural phenomena has led to the discovery that matter, force, and life subsist without being created and without being destroyed. This is the law of the conservation of matter (Lavoisier), of force (Mayer), and of life (Preyer). Life is a mode of force. Force is not an entity. It is an attribute of matter.

Outside matter force cannot be conceived. Matter and force do not exist at all as separate entities. There is matter affected by movement, of which the infinitely various associations produce the infinitely different phenomena which we notice.

It is by mental abstraction that we denominate force that quality of matter which causes its combinations to be infinitely variable. Matter and force are then the same thing, for they are inseparable, inconceivable as distinct entities. One might then say: The conservation of matter is a principle which results from the observation of all phenomena. Nothing is lost, nothing is created. Then the hypothesis of free will is in absolute contradiction to the law of the conservation of matter. In fact the hypothesis of free will forces one to admit something come from we know not whence, emanating from we know not what, something which would prevent or modify the manifestations of individual activity. This would be, as M. Ferri has said, a creation or a destruction of forces, which is neither to be admitted nor con-

ceived. In the whole universe there is nothing which is created or destroyed; the different manifestations of matter are only transformations.

Consequently the hypothesis of free will contradicts the two great principles of causality and of conservation of matter, principles which are valid for all phenomena throughout the universe. There is no reason at all why we should not find these same principles in human phenomena. Therefore the hypothesis of free volition is useless and absurd.

Again the impossibility of the existence of free will is further confirmed by the daily observation of facts. We must not forget that man is the resultant of the time and place where he lives, that he is intimately connected with all that surrounds him, preceded him, and follows him.* His ego is influenced and modified by all the environment in which he lives.

Heredity or interior environment has determined his character and temperament; Cosmic, individual and social environment act upon his character and temperament and modify them. As the product of these environments the human being cannot be free, and all his acts are determined. The human will, a state of consciousness, is subject to physical and social agencies. Physiology, psycho-pathology, and statistics prove that it is so.

According to each individual the energy of will varies. But it varies in each individual according to external or internal influences. Heat, cold, wind, damp, dryness, the electric and luminous condition of the atmosphere, climate, the altitude, geology, orography, the cultivation of the land, vegetation, all these factors which constitute the cosmic environment modify our being and consequently our will. Nutrition, the chemical interchanges in our nature, the assimilation and dissimilation, the state of health, the state of illness, all these factors which, added to heredity, constitute the personal environment, modify our will, and are its components. The habits, the customs of society where the individual lives, his social condition, his profession, food, clothing, habitation, hygiene, and that of those surrounding him, epidemics and endemics, the instruction and education of the individual and of

* Dr. Ploger. *La Vie Sociale*, p. 207.

his fellow-citizens, the institutions and laws, etc., are equally factors of which his will is the result. All these diverse environments act simultaneously, and react one upon another, influencing and being influenced (Capitan).*

Whatever may be the extreme complexity of mesology, the influence of the environment on the will cannot be doubted, for a multitude of facts prove it. Scientists have not been able to measure the intensity of each factor, or to know which of them outweighs the others, for they are entangled, combining, modifying, attenuating, and exacerbating one another. In the universe, and consequently in humanity, nothing can be separated. All holds together, acts and reacts. No phenomenon takes place without affecting all that exists. The degree of influence of each factor in the determination of an act, it is at present impossible to measure. It seems as though we cannot imagine the day when this knowledge will be complete. It is only possible at present, in the genesis of certain acts, to know the relative predominance of certain factors over others, and this exclusively with regard to certain series of factors—social environment for example. But the considerable complicity of all the factors and of their influences does not in the least prevent the verification of their modifying action.

Will, we have seen, is a particular point in the psycho-physiological process which leads from impression to an act. The encephalos is the necessary organ for the performance of this process. If the elements of this organ are disordered, so is necessarily its operation. The state of consciousness called *will* would not manifest itself any more if the cerebral portion of the encephalos were gone. This portion has been taken from young fowls and cats, leaving the optic lobes and the organs of hearing and smelling. These animals continued to see, to hear, to smell, and to feel. They received sensorial impressions, but they remained passive and inert. They could not will, because the organ where perception is elaborated was gone, consequently the function was lost.† If one acts upon an organ, modifying it, one necessarily acts upon its function. Thus it is that the nutrition of the brain influences

* Le milieu exterieur. *Revue de l'ecole d'Anthropologie*, 1895, p. 293 *et sq.*

† J. V. Laborde. *Revue Mensuelle de l'ecole d'Anthropologie*, p. 301, 1894

the will. The conditions of nutrition of the cerebral elements are bound up with the condition of the nourishing liquid, and with the conditions of the general and local circulation. Every cause which would augment or decrease the circulation, would increase or diminish the pressure of the blood and would modify the will. Alcohol, coffee, tea, absynthe, tobacco, opium, haschisch, morphia, heat, cold, humidity, etc., are such causes. The absence of light produces anæmia and tuberculosis, and depresses the nervous system. In excess, light is a powerful excitant, which can even disorder the whole nervous system. The same being, living in a luminous or an obscure environment, would not have at all the same will, all other conditions being the same. The action of heat or cold is considerable. The blood vessels dilate or contract, the pulse flows slowly or quickly, the brain is bathed in blood more or less rapidly changed. Everything else being similar, the individual will have his will modified according as he is hot or cold. The composition of the air breathed, the pressure of the air, its humidity, its electric condition modify the circulation and the chemical composition of the blood. The encephalos is thus nourished by a liquid of varying composition at the same time that it varies in its circulation. And the will, function of this organ, varies according to the nutrition of the organ.

We all know how a difficult digestion modifies our ideas, disturbs our will. The brain is less nourished, the flow of blood going to the stomach, which has need of it at this moment. The manner in which the individual assimilates and dissimilates is of no less importance in the modifying of the will. The abnormal accumulations of toxine whether physiologically or pathologically elaborated in our system exercises a powerful perturbing influence on the operation of our nervous system. This disturbance is variable in intensity and in its manifestations, according to the length of time that the toxine acts, and the greater or less resistance of the organism. There are mental maladies caused by imperfect assimilation. Uræmia, for example, often gives rise to mental troubles. M. Massaro* has noted a case of melancholia caused by previous gastro-intestinal injuries. Is it not Voltaire who said: If I have a favour to beg of a minister I should first inquire of his valet

* J. Pisani. *Fascicule III*, 1896.

whether his digestive organs have done their work properly? The manner of alimentation in acting upon the individual, acts upon his will. The following anecdote, taken from an account of a voyage of Commandant Toutée, illustrates this assertion—

"As for myself, said he, unburdened of my arms, and of the trouble of conducting Ousso, I got on better, but my stomach, empty since dawn, beat the drum for a parley. Giddy from the heat, dazzled by the sun, stumbling over the rough soil, saddened by the dismal procession which we formed behind this chanter in rags (Ousso), I was tormented by reflections not sadder than those of the morning, but bitter, very bitter. 'What tarantula has stung you then? You know nothing of Africa. We set out four days ago and everything has gone from bad to worse. We are still right in the French colony and all the men are disbanded. What a fiasco! What need had I to quit my country? A career assured and tranquil, a good chief, an envied position, the joys of family life, nothing failed me, and now to find myself lost, struggling, and stumbling among four negroes in the most unhealthy country in the world.' And scrutinizing all these reflections the little monster Ousso howled all the time: glou gue guieu—'it is I who was a fool when I came with you!' To which I replied in thought, 'And I then, what a simpleton am I to come here with you!' At last towards noon we passed Evedji; at one o'clock we reached Agrimé; two eggs, a turtle to restore me, a cocoanut to refresh me, and immediately, too, the course of my ideas completely changed. '*Dahomey is a charming country, very clean, full of obliging people*, the route is beautiful, Captain Toutée is a happy mortal, entrusted, too, with a task of no small moment. Forward, then, gay as a lark, over the beautiful red earth, across fields of beans,' until 7 p.m., when we arrive at Cana."*

My readers will excuse me for this long quotation, for it shows so well the influence of alimentation upon mental activity. M. Toutée was hungry—very hungry—and everything appeared black to him. He satisfies his hunger, his imperious need, and everything seems gay, quite couleur de rose. Do we not know the proverbs: "Hunger will break through stone walls" ("La faim fait sortir le loup du bois"); "Hunger is a bad counsellor" ("La faim est mauvaise conseillère")? Do we not all know that rebellions have been caused by hunger? We remember the silk weavers at Lyons, who demanded lead or bread. The privation of food provokes revolts to obtain provisions. But to a certain degree this privation robs energy, the individual is lacking in will, he is incapable of willing (aboulique). The influence of the seasons is also perceptible as influencing the will, as well as the healthy action of the sexual organs. Women are subject more or

* Commandant Toutee. *Dahomey. Niger, Touareg.* pp. 64-65. Paris, 1897.

less to the influence of their periods. Frequently manias are developed during menstruation. Neurotic affections are provoked by meteorological influences. Periodically, with certain changes in the atmospheric conditions, some people experience depressions or pains, the seat, character, and intensity of which vary. Atmospheric humidity, electricity, degree of ozone, etc., are principal factors in the etiology of these nervously susceptible subjects.* The most pacific man, as Ferri tells us, becomes aggressive, when a certain wind blows across the pampas of South America.

Not only do physical agents influence the will, but social factors also. Who does not know the power of imitation? Who has not recognised it among children and adults? Habits are among the most powerful agents in affecting the will. Clothing, habitation, playing a part in the variations of temperature, and the luminosity of the atmosphere, act indirectly on the will. The profession, condition of wealth, of poverty or destitution are equally modifying factors affecting the will. Upon them indeed depends the conditions of alimentation, heat, cold, humidity, etc. Do we not remember the words of Quetelet: "We might calculate beforehand how many people will soil their hands with the blood of their fellows; how many will be forgers, how many poisoners, almost as one can calculate the rate of births and deaths that will follow them"? Do we not know that Professor Lacassagne has drawn up a criminal calendar showing a connection between excitements of a physical order and an increase of certain crimes. But why expatiate further. Everyone who reflects a little will perceive how certain phenomena influence the vigour and rapidity of the mental processes, and consequently the will, which is a certain stage in one of them. This influence produces either a state of vigour or of nervous depression. The state of neurasthenia may go as far as complete powerlessness of will, that is to say, absence of will and inability of the individual to will.

The will can cease to act, the memory, the intelligence, or any other function of the central nervous system can cease. We know that M. Ribot has studied the maladies of the will. In the condition of madness the cerebral organism is disturbed, and conse-

* L. Löwenfeld. *Munchener medicinische Wochenshrift.* No. 5, 1896.

quently also its psychic action. It can happen that the functions of perception and consciousness are lost, and nevertheless the intermediate ganglionic and myelitic centres remain healthy, performing their functions involuntarily and unconsciously. There are a number of intermediate states; follies, partial deliriums, manias, etc., during which the conscious and perceptive function is not gone, but is more or less feeble. We all pass through states of feeble or vigorous will, all these disturbances of will, these anomolies, swoonings which we meet with among individuals who are irresolute, fantastic, capricious and impulsive, whether consciously or not, weakminded, etc. In the hypnotic state there is more or less complete abolition of will, and the hypnotiser's will is substituted for that of the individual hypnotised. We all know how certain people influence others, by suggestion disturbing their will. Children generally are extremely susceptible to suggestion. In a certain measure, as M. Bernheim* says, we are all so susceptible more or less. An appropriate education developes the will just as it does the intelligence. And here the influence of education shows itself, showing that, all other things being equal, two individuals will have different wills in proportion as their education differs. The child who has been taught to will, to consider his acts, when he becomes a man, will know better how to will than he who as a child has been accustomed to obey, habituated to doing as others wish.

Heredity consists in the transmission by the two progenitors of the characters they possess.† It also is a factor, and not the least important, in determining the will. It has fixed the individual tendencies, established the substratum upon which the cosmic, social, and personal environments act, developing, atrophying, producing anæsthesia or hyperæsthesia. It has prepared the canvas upon which the mesologic influences embroider a thousand various arabesques.

This action of all the mesologic conditions upon the individual is proved scientifically. Physiology, psycho-pathology have demonstrated it, and statistics have added their confirmation. We are able really to prove that marriages, crimes, suicides, emigration,

* *Hypnotisme, suggestion, psychotherapie*, p. 138. Paris, 1891.

† A. Bordier. *Revue Mensuelle de l'Ecole d'Anthropologie*, p. 313, 1894

births, mortality, etc., are subjected to the influences of the social as well as cosmic environment. A relation has been established between these social phenomena and cosmic phenomena.

The character and propelling influences, these are in short the two factors which produce all human action. The human being always acts conformably to his nature. In each particular case his actions are determined by the causal influence of motives. The choice always tends towards that which is most agreeable. But it is more or less rightly considered according to individual character, and the development of the reason. With M. Debierre we might then say: The final cause in a choice is the character, that is to say, the personality or ego, which is an extremely complex product of heredity, education, example, and experience, and which characterises much more the mode of feeling, than intellectual activity itself. Sentiments lead men more than reason.

All actions are positively determined by a multitude of factors. An attentive analysis will give partial knowledge of them. The variability of the factors in quantity and quality shows the justice of Dr. Pioger's* remark: "There is no *one* human will, there are *several* human wills; there is not *one will* in Peter or in John, there are *wills* in Peter and in John, varying according to age, state of health, circumstances and conditions of life."

Psychic phenomena are as rigorously determined as are physical and biological phenomena. On this subject I may quote the words of Kant—

"If it were possible to penetrate sufficiently deeply into the manner of thinking of each man, and if the most insignificant springs and all the circumstances influencing a man were known, one could calculate exactly his manner of action in the future, just as one calculates an eclipse of the sun or the moon."

As proof of the existence of free will, many of its adepts argue as follows:—

I am free to will at my own pleasure. Thus try to prevent me from willing something and immediately I will it all the more. Defy me to spring from the top of a rock upon the shore, and I will spring, proving thus that I am free to will or not to spring.

The supporters of free will reason thus without perceiving the incomplete analysis which leads them to this conclusion. Opposi-

* *La Vie et la Pensée*, p. 183.

tion made, defiance aroused, constitute motives which have determined the individual to a foolish action, in order to prove a non-existent liberty. This opposition to motives, called by Schopenhauer the "motive of contradiction," is the great argument upon which Jules Simon depends to maintain free will. He never perceives that this contradiction is in truth a determining motive.

Some partisans of free will have fought determinism with the following argument:—

"Show me a man who is a profound philosopher and who denies free will; I will not dispute at all with him, but put to the proof the common occasions of life, that he may be confounded by himself. Suppose that the wife of this man was unfaithful, that his son disobeyed him, and despised him, that his friend deceived him, and that his servant robbed him. I would say to him when he complains of them: Do you not know that none of them did wrong, that they were not free to do otherwise? They were too, by your avowal as inevitably obliged, to wish as they wished, as a stone is to fall when nothing supports it. Is it not then certain that this whimsical philosopher, who dares to deny free will in the study, will nevertheless consider that in his own house he is unquestionable, and will be as implacable against these people as if he had all his life maintained the dogma of the greatest possible liberty?"

This argument of Fénélon is brought forward by M. Fabreguettes as his own,* considering it as a proof of the existence of free will. One is really somewhat astounded to see such arguments advanced as a proof of moral freedom! If our "whimsical philosopher" supposes free will in his household, and opposes it in his study, that does not prove that free will exists. This contradiction between the theory and practice of our "whimsical philosopher" shows only his want of logic. It is an excellent proof that there is no agreement between his acts and doctrine, which is frequently the case when the doctrine is principally a product of the reason, and the acts are principally the result of sentiment and character. M. Fabreguettes is wrong when he repeats after Fénélon: "Do you not know that neither of them did wrong?" As a matter of fact the friend and the domestic did do wrong to act as they did act. A determinist would not say: "None of them did wrong." He would say: "They were wrong, but they were not free to do otherwise, for their wills were determined." One can do wrong to do a thing and yet not be free not to do it. The case imagined by Fénélon as proof is no proof of the moral liberty

* *Société, Etat, Patrie.* pp 217-218 Paris 1897.

of the agent. It would be possible to act as Fénélon supposes, and that would show that he was bound to act thus, on account of all the causes of which his will was the result. The mode of arguing of Fénélon and M. Fabreguettes is then simply childish, and cannot stand at all even against a superficial analysis.

To conclude, "every psychic condition is invariably bound to a nervous condition of which reflex action is the most simple type." This is the psycho-physiological axiom we may thus express in the words of Professor Debierre. Psychic life forms a continuous series which commences with sensation and finishes with movement. At one end there are the sensations and images bound up with psychic states. At the other end there are the desires, sentiments, and volitions bound to psychic states. Between the two there is no *terra incognita* presenting other relations than those established in the natural phenomena of every order.

We know only partially the multitude of factors of which the will is the result. We are ignorant of the power of each factor, its degree of intensity, the part which belongs to it in the genesis of the act. Whatever our ignorance, however, it is a sure and palpable fact that in the genesis of the act no element of liberty enters. At no point of the process, of which the act is the end, have we found free will. It is an illusion arising from an absence of analysis or from a superficial analysis of the psycho-physiological process which leads to action.

The only liberty which the human being possesses is that of acting according to his will, his own tastes, his leading inclinations, or his own motives.

This is sufficient, M. Manouvrier has justly remarked, to make us free. As for our will it is itself a result determined by organic and extra-organic components, in no wise independent.

Bayle, Hobbes, Voltaire, and many others have already asserted that liberty of action was the only form of liberty we possessed. They placed liberty in the power to act as one wished. Rationally they demonstrated that this was the only liberty we possess. To-day by the positive method we have arrived at the same demonstration: The human being does not possess free will, he only possesses liberty to act.

This liberty of action is the possibility to translate into an act

any volition whatever, if no impediment intervenes to prevent it. It is the possibility to co-ordinate the movements of our organs for the execution of a voluntary act. This liberty of action is a property inherent in the individual and common to all.

Free will or determinism! These are the two only theses which ought really to be put in opposition. Under examination free will succumbs. The discoveries of the biological sciences have reduced free volition to nothing. And nevertheless this illusion has taken such a hold on the human mind that man has sought every possible means to reconcile his desire with the reality. Not being able to determine to abandon free will, certain philosophers have sought to purify it, dilute it, attenuate it, sometimes to the point of rendering it unrecognisable, and of falling back into the determinism which they denied.

Thus M. Fouillée, vanquished by the scientific evidence, avows that moral liberty does not exist as an arbitrary power of will. In spite of this avowal, he endeavours, together with M. Siciliani,* to demonstrate the existence of free will, as an ideal force, tending to its own realisation. "Man is not free, but he tends to become free."† Of this attempt at demonstration we may say with E. Ferri: "This, in spite of the philosophic talent of the eminent writer, is a mere play upon words, fantastic theories under the verbal surface in which there is nothing positive nor fruitful."‡ This is pure logomachy. Reflection shows it to be empty, and inconceivable.

For M. Foyau§ free will is the power to choose oneself and do the good, to do the bad willingly being an impossible and inadmissible thing. It is difficult to understand what this means, the more so that the bad and the good do not exist of themselves, for the conception we have of them differs according to individuals.

M. Fulci‖ admits a kind of moral liberty. He bases it upon that which Schopenhauer has called "the motive of contradiction." The opposition to motives when they can conquer other motives, proves, says he, the existence of free will. Our will is certainly

* *Le Questioni Contemporanee e la libertà morale.*
† *La Liberte et le Determinisme.*
‡ *Sociologie Criminelle*, p. 266. Edition, Francaise
§ *Liberté Morale.* Paris, 1888.
‖ *Evoluzione del diritto Penale.*

determined by motives. Nevertheless it can prove its liberty, of which we have such intimate consciousness, just in opposing itself to motives "which at least have not an irresistible force." M. Fulci's conception is not very clear. For him, in fact, free will is the power to prove our liberty of volition. The opposition to motives, the basis on which his vague conception rests, is really a motive which limits the individual. Then the will finds itself always limited or determined by motives, even when it opposes itself to motives. In short, trying to scrutinize M. Fulci's idea, we find that his theory is only another representation of the old theory of free will, of effect without a cause.

These attempts at dishing free will up again having piteously failed under examination, many upholders of free will have sought refuge in vague and unprecise interpretations. Some have so called the special energy of each individual to develop himself in a particular manner, different from the development of others. This is pure determinism, for this energy is only a manifestation of mental activity limited or determined by all the ambient influences together, that we have considered. Certain obstinate defenders of the expression "free will," more than the idea, have regarded it as the absence of obstacles to the development of our tendencies, that is to say, as physical liberty, or more exactly the liberty of action. This again is pure determinism, since we have just *seen* that liberty of action is the one liberty that we possess, according to determinism.

Some, while still maintaining free will, have more or less considerably reduced it. Dr. Leo Warnots denies the existence of *absolute* free will, but he admits a relative free will, attenuated and restricted. The Abbé de Baets is of the same opinion. "The liberty of man is not perfect and absolute, it cannot operate without the continual and important intervention of the organism, whose functions develop according to the fixed laws which govern matter."* There are in man movements which are beyond the reach of free will. There are others over which it has an indirect influence. Free will does not incite to all acts, many are begun without its command. Nevertheless it can stop actions already begun. The old scholastic idea maintained: Free will does not

* *Les bases de la morale et du Droit.*

exercise a despotic and absolute power over human activity.* In short free will in this conception is an entity having a distinct existence in itself. It acts on the individual by means of the material organism, subjected to the influence of a multitude of causes. Free will is then found attenuated by these causes. It cannot act entirely in an absolute manner. On the other hand it has a partial influence on certain acts in certain cases. Man has then a relatively free will. The Abbé de Baets seeks to reconcile science and revelation—the Catholic dogma. His conception necessitates the establishment of an immaterial entity not subjected to any influence, choosing without motive. It amounts in the end to the complete conception of free will, since its attenuation comes only from the instrument which it uses to manifest itself. The possibly perfect musician, if his instrument is bad, will play badly. Free will restricted, attenuated becomes the theory of integral free will.

For some the freedom of will consists in the consciousness that we have reasons or causes for our acts. The more consciousness of the reasons for our acts we have, the more we are responsible. That is the social teleology which has induced philosophers to see the moral freedom in the consciousness of the reasons or causes of our acts. Considering it necessary that a moral responsibility should exist they have concluded that a moral freedom of action exists, and this freedom they have based on the consciousness of our acts. From this it results that the free will is relative, more or less complete, according to the more or less perfect consciousness. It is never quite complete as nothing proves that we have a perfect knowledge of the causes of our actions.

This moral liberty or freedom resting on the consciousness has nothing to do with the classical free will. To be conscious of the causes of acts does not prove the freedom to will these acts. Man knows the causes which make him act, but he cannot oppose these causes. His acts of will are determined by the causes of which he is conscious. Therefore they are not free. He does not possess the freedom of will. To qualify the moral freedom by the consciousness of causes is a terminological error which leads to

* De Baets. *L'Ecole d'Anthropologie Criminelle*, pp. 44-47. Gand, 1893.

erroneous conceptions. This is indeed a pseudo-free will created for the purpose of keeping up a pseudo-moral responsibility.

To maintain the existence of free will M. Bergson has denied that there are causes in the moral world. Between the act and the sensations which produce it there is no relation. No observation or experiment has been adduced to prove M. Bergson's thesis; it is a pure hypothesis without any reasonable basis contrary to logic. Its only object is to create a foundation for the moral responsibility. Logically one is entitled to unite causes and acts, reason and sensations. All the phenomena prove their relation.

It has been pretended that the non-existence of liberty of will implied the negation of civic liberties (religious liberty, freedom of speech, freedom of association, etc.) This is an error, showing an insufficiency of examination. Civic liberties are the established relations between living human beings taken collectively. Whatever may be these established conditions, men are not the less restricted by all their internal and external environment. These conditions are the effects of human activity, at the same time as they form one series of the factors determining human activity. According to the totality of the conceptions of men taken collectively, these civic liberties will attain a greater or less degree of development. They are then the results of human conceptions, themselves determined. That is to say, these civic liberties make, like other social conditions, part of the social environment. They are then among the components of which the individual is the result. Consequently the non-existence of moral liberty does not necessitate the suppression of civic liberty.

It does not any more necessitate the destruction of individuality, of personality. Quite the contrary. The personality is simply the totality of all the qualities particular to an individual, the differentiation between other individuals of the same species and himself. John has differences of character, intelligence, and, in a word, mental activity, which distinguish him from Peter, who is in turn distinguished from Andrew. It is the totality of all the qualities special to John which constitute his individuality. It is the speciality of all these qualities which makes the individuality of John differ from that of Peter. These differentiations between human beings are the resultants of all the ancestral, cosmic, and

social surroundings. Every human being responds differently to the influences of his environment. It is on account of these variations of response, that there are differences between men, that there are personalities and individualities. They are the resultants of all the mesologic conditions, those which have acted upon all the ancestral line, those which have surrounded the being since his birth, those which surround him now. The individuality is only the resultant of the ancestral, cosmic, and social environments of a human being. It could not exist except for the fact of determinism.

Determinism has been objected to on account of its fatalistic consequences—turning the human being into an automatum. This is perfectly true. The human being is determined. He is as he ought to be. He is as he cannot but be, *all the conditions being given*. He is then quite an automatum. But this is not an objection, it is an authentication. Because determinism proves the individual to be automatic is no reason to deny it. A doctrine is true or false, independently of its consequences. We have seen that determinism is the expression of a scientific truth. The fact that this doctrine shows man to act automatically does not make it false.

Thus the human being is undoubtedly an automatum. But he is an automatum which differs from many other machines. In fact he is an automatum in whom we are ignorant of the special springs that make him act. A superficial examination shows us that man is not an automatum like a locomotive, for example. For the latter, we always know the causes which make it move. We know that it cannot help moving, these causes being given. Apparently it is not thus with man, for we do not know all the influences which act upon him. Many of them escape us. Neither can we with certainty foresee human actions. And from this has resulted the false deduction that man is not an automatum. Let us recall again the words of Kant, that if we could know *all* the causes, internal and external, determining the individual we could in all certainty foresee human actions as we know beforehand the movements of a locomotive. This automatism, undeniably in human beings, does not imply the exclusion of individuality. Every man is a different automatum, because he reacts differently

on all the influences surrounding him. The more individuals become complex, thanks to the division of labour and the specialisation of organs and functions, the more pronounced are their individualities. In fact the reaction to surrounding influences differentiates more and more. The automatums become more and more complex, and appear less and less like automatums.

The defenders of free will have concluded from this automatism of the human being that the individual, knowing himself to be an automatum, knowing that he could not help acting as he has done in certain given conditions, will not in the future try to act differently. This is the idea that moral liberty is what makes him resist temptations. As the possession of intelligence influences the conduct of an individual, so the idea is, that free volition does the same. It is doubtless so. But it is not less true that the idea of determinism will act upon the determining of deeds. Will this action be bad, as the adepts of free will suppose? It could be so; it could also not be so. The harmfulness or otherwise of the belief in determinism will depend upon the education, that is to say, the conceptions which oral instruction or example will cause to arise and develop in the human brain. Here it is not our place to enter into the modifications which education and instruction would have to undergo, granting that determinism is a scientific truth. This would be the business of a rational, scientific pedagogy. It must suffice for us to indicate one of the necessary consequences of determinism: The human being is modifiable, through the influence of his external environment. The variations of his surroundings make man vary. We understand then that all improvement of human knowledge, of the conditions of well-being can improve, and certainly do improve, the human being. The modifications of industry, commerce, manners, customs, institutions, laws, are so many agents in the modifying of men. The knowledge of the mode of action of the internal and external environment upon man, taken individually or collectively, really constitutes the biological, psychological, and sociological sciences. Without the influences of these surroundings, there are no sciences. Free will renders completely absurd and impossible all sociological science. With free will all is merely a vast disordered and unregulated chaos.

The idea of determinism far from being injurious to the individual, will be to him a powerful aid for good, when applied to education and instruction. Determinism once admitted by all, a reciprocal toleration among men, and the prevention, by appropriate hygienic means of impulses and passions, in place of intolerance and the repression of impulses and passions, which are the inevitable fruits of free will.

Some believers in free will, among others MM. Brunetière and H. Béranger, consider inaction as a necessary consequence of determinism. The individual is not free to will or not to will. Therefore the "souls" are discouraged. The sentiment of effort is killed in them, and they are fatally led to moral dilettantism and to egotism, to the worship of self as the final end. Determinism has not necessarily fatally and inevitably this consequence. Man is a resultant of a multitude of conditions, some known, some unknown. According to these conditions he is energetic or lacking in will, proud or mean, strong or weak. One of these conditions is the idea that the individual has of individual determinism. Every phenomenon is the effect of manifest causes; every phenomenon is the cause of various effects. Everything is at the same time cause and effect. When a person is conscious that he is determined, he is also conscious that he determines. He is an effect certainly; but he is not less certainly a cause. Determinism knows that with scientific certainty. Thus inaction is not the inevitable consequence of determinism. This doctrine could lead Peter to be discouraged, not to wish to make any effort. But that could be the case only because all the other conditions of which Peter represents the total concur to this result. The same doctrine of determinism will lead John to vehement action or to permanent effort, because all the other conditions, determining John, concur to this effect. Logically the idea of universal determinism incites to continuous effort, for the individual knows that *necessarily*, inevitably his efforts will have effects. He knows that in acting, he produces phenomena, which will cause other phenomena, and so on without end.

Certain individuals have objected to determinism on the ground of certain psychic phenomena, such as remorse, conscience, in its metaphysical sense, hesitation, and deliberation. The theory of

determinism would not be overthrown by these facts. "If these phenomena," writes M. Paulhan, "could not be brought about by psychological mechanism, by no means could they escape the laws of causality." Now nothing proves that it is so. If I deliberate, for example, it is because I have reasons for deliberating, and it is precisely these reasons which perhaps determine me to deliberate over other causes. It is easy to trace remorse to very well known psychological laws, which does not imply any rupture in the weft of phenomena.

Determinism necessary excludes the existence in the human being of anything immaterial. It is not in contradiction with certain forms of deism, but it is in opposition with spiritualism. Some people have found in this fact a proof that it is false, because it is in contradiction with phenomena which have lately been subjected to scientific examination. We mean all those phenomena known as occult, of the spiritualists, etc. These phenomena, in so far as they exist, are not in opposition with determinism. It is the explanation of them given by certain people which is in opposition. But nothing has yet proved, and we think nothing can prove, that there is immateriality in these phenomena. If they really exist, they are explicable and conceivable by a purely material hypothesis, of a mode of matter newly ascertained.

A consequence of determinism is to exclude merit and demerit. In fact, the individual being determined, that is to say, being as he cannot help being, all the conditions given, it necessarily follows that there is no merit or demerit in acting as we have done. *He could not help doing so.* This non-existence of merit or demerit has for its consequence irresponsibility.

From the necessary consequences of determinism—no merit, no demerit, irresponsibility, automatism—it results that this philosophic doctrine modifies the principles upon which the present form of society rests. Instead of being based upon recompense and punishment in future society morality will become purely utilitarian and egoistic. *In consequence it will attain the highest known degree of altruism.* It will have no other sanction than the pleasure or the pain that will result immediately or mediately for the agent. Manners, customs, institutions, will tend to prevent and not to repress. In place of the present empiricism of social

therapeutics, reasonable hygienic and methodical treatment of the individual and of numbers will be substituted. Everything is cause and effect. Nothing is accomplished without re-echoing more or less upon all surrounding conditions, upon all individuals. There is also a direct and certain interest in knowing these causes and effects. The more this knowledge grows the more it will lead to the ordaining and regulating of forms of society most favourable to the individuals composing societies. The establishment of determinism as a scientific fact will enable the pathological elements in the individual and in society to diminish unceasingly. One can foresee the time when these elements will be infinitesimal, nothing but the rarest exceptions. It would take much space to show and illustrate the individual, psychological, and social consequences which will result from this scientific truth: determinism is the constant relation uniting all phenomena. Here we can but indicate them in broad outlines.

III.

The Definition of Crime.

Criminology—the science of crime and the criminal—has to discover the causes which have engendered crime, to examine the individuals who have committed it, to study them from the anthropological, physiological, and psychological points of view—such are the aims of purely criminological science. Applied criminology is the use of the knowledge amassed by criminologists to modify crime and the criminal in human society.

Criminology is the search after all the influences productive of crime; the cosmic factors (climate, orography, geology, altitude, electricity, atmosphere, temperature, humidity, etc.), social factors (education, profession, manners, customs, instruction; social conditions, etc.), personal factors (atavism, heredity, alcoholism, nicotinism, morphinism, etc.). Criminology is the study of the criminal, the analysis of the causes which lead to crime, their classification according to degree. In criminology the morphology of criminality is studied comparatively in the same place and at the same time; in different times and places showing variations in crime and their causes. Thus one can study the political form of crime, the professional, the common or teratological form. Thus under another aspect one can examine the influences of each of the particular factors, influences varying according to time and according to place. The very essence of criminology is to be comparative. It would have no *raison d'être* if not for this. Otherwise it would be limited to an insignificant compass and to a series of mere monographies, unconnected by any tie. To find out what relations exist between the various forms of crime it is necessary to analyse crime and criminals; then to compare them in different ways from special points of view. Without the comparative method there can be no criminology.

Before studying the subject matter of criminology it seems to us absolutely necessary to come to an understanding as to the terms we employ. A precise terminology permits a minute analysis.

It is important then first to decide what is meant by the word crime. This will prevent much confusion. It will prevent different things being denominated by the same term. This will allow of the comparison of theories and criminological documents. I am well aware that Lombroso has abstained from defining crime. I know that one of his disciples, a master authority, M. E. Ferri, considers all definition useless. His words are: "I believe, in the first place, that there is always time to give definitions, for they ought only to be the synthesis of analyses which new sciences, such as anthropology and criminological sociology, have not yet accomplished. It is always a remnant of meta-physical habits which causes people to hasten first of all to give definitions."*

M. Ferri is mistaken. He confounds definitions with scientific "laws." A definition is the explanation of the true meaning of a word; it is therefore the enunciation of the distinctive attributes of the thing designated by the word; the attribute being that which is proper or essentially belonging to the thing. A definition is by no means a synthesis of analyses. Analyses can only be made under the condition that, previously, one has a definite idea of the terms used in the study of any phenomenon whatever. If one has not this idea, that is, if the terminology is fixed after the analyses, as M. Ferri desires, then different scientists will call the same things by different names. Or, even more, they will call different things by the same names. There will be a general cacophony, a logomachy productive of obscurity.

The synthesis of analyses which M. Ferri would have, is that which in physical, chemical, and anthropological sciences is called a *law*. It is the expression of a relation found to be constant, when one unites or synthesizes the manifold analyses of the phenomena observed. These natural or scientific laws are not imperative, immutable, and inevitable. They are, we repeat, the expression of certain constant relations, obtained by a synthesis of analyses. We never know whether the discovery of new phenomena may not come and modify these relations, consequently changing these natural laws.

Contrary to M. Ferri, we do not think the haste to give definitions at the outset is a remnant of meta-physical habits. This

* *Op. cit.*, p. 44.

haste is an indication of great precision, of extreme clearness of mind. Before studying any order whatever of phenomena, reason indicates that it is necessary to have a precise terminology. Otherwise we could not understand one another.

If certain chemists called the combination of oxygen and of a metal or a metalloid *salts;* if certain others called the combinations of an acid and a base *salts*, it would be almost impossible to understand chemistry, because very different things would bear the same name. On the contrary, every chemist knows that the word *salts* means nothing else than the combination of an acid and a base. Thus when he sees this word he understands immediately what phenomenon is in question. This is no remnant of meta-physical habits. It is simply careful precision, clearness, that which is by no means a characteristic of meta-physics, which are always obscure and vague.

In physics, in chemistry, and in physiology on the other hand the technical terms employed are always well defined. When a natural philosopher treats of density, weight, or hydrostatics, or a chemist treats of acids, salts, bases, all other physicists and chemists know exactly what is the matter in hand. It is the same in all other sciences. And it is necessarily so, because only thanks to a precise terminology is it possible to compare the phenomena observed and described by scientists, and to discuss them with profit. It is only in classic philosophy, impregnated with meta-physics, that the terms have a certain vagueness which give rise to very great errors. Criminology—a science still in its infancy—treats of crime. But what we mean by crime we do not exactly know, for criminalists either abstain from defining crime, or their respective definitions differ.

Thus Lombroso treats of the criminal without defining crime. He leaves to each the task of doing so, according to his own opinions. The consequence is that he calls some people criminals whom others do not and *vice versa*. This is a proceeding which reveals little method of mind and great imprecision.

Other savants have recognised the faultisms of a mode of procedure so anti-scientific, for it is not scientific to deal theoretically with an undefined matter. And they have attempted to define crime.

The jurist calls all infraction of the penal law crime or misdemeanour. One cannot accept such a definition as scientific, seeing the variability of penal laws in different times and places. They are continually being modified. Continually, the customs which are productive of these laws, evolve new forms. Continually, developed intellects force a breach in the laws, show their absurdity, their injuriousness. One cannot then seriously study crime, by basing it upon infraction of the penal laws.

To define crime M. Garofalo* has recourse to the two sentiments of pity and honesty. All offences against sentiments constitute crime. It is to this same definition that MM. Debierre† and Q. Newmann‡ have adhered. They impute to the whole human species, in all times, a certain moral sense of which the average sentiments of pity and honesty are the substratum. The violation of these sentiments in all times and in all places was an offence, was a crime.

This definition will not stand. It is a fact that infanticide and patricide offend the sense of pity among the civilised. They were no offence formerly in Europe even. And to this day they are none among certain savages. An undeniable fact is the variability of sentiments not alone in time and space, but also in individuals, at the same time and in the same place. To determine crime according to offence against sentiments so variable is to give it an unstable definition, and render a serious study of crime impossible. Criminology is, by the very definition of the word, the study of crime and of criminals. If the idea of crime varies in time and in space, criminology becomes simply a study of these variations, that is to say, a study of the evolution of morality, or at least of one branch of it. This is not criminology. The object of criminology is to analyse the things called crimes. It has to bring together and compare living people in different places and times, individual authors of the same things, called crimes. That this comparison be possible, it is without question necessary that the things of which they are the authors should have a single or a collection of common characteristics, unalterable, the same in any epoch, in any place whatever. Our reason refuses to base crime upon sentiments, even

* *Criminologie*, pp. 5-45. Paris, 1888.
† *Op. cit.*, pp. 220-221.
‡ *Notas sueltas sobre la pena de muerte*, p. 20. Valparaiso, 1896.

average ones, whose variability is undeniable. Similar acts, committed in different times or places, would or would not be crimes. Whence it follows that their authors could not be compared. A still more curious result would be the fact that if one compared them some would be considered the type of virtuous people, and others the type of the criminal. Both would have committed the same acts! This would be an inevitable consequence of the determination of the idea of crime by the violation of the sentiments of pity and honesty. This consequence would make all criminology, all serious, comparative study of criminality and criminals impossible. So we must altogether reject M. Garofalo's definition as incompatible with criminological science. It would be of value for the study of morality.

According to the theory of M. Morasso, crime is "the special dissolution of that recent social product, known as the moral sense." Crime is then an offence against the moral sense, so the criticism which we have just passed upon M. Garofalo's definition applies equally well to this one. As the moral sense is a recent social product, it results that formerly, before its production, there were neither crimes nor criminals, although the same acts were committed! This conception of crime prevents all comparative study of criminals. It will suit, on the other hand, for the study of the evolution of morals.

M. Tarde has proposed the following definition:* "The idea of crime essentially and naturally implies that of a right or a duty violated." To explain this definition it is necessary to determine the signification of the words "right and duty." M. Tarde explains them in very obscure pages of pure meta-physics. "Right and duty" are established conceptions, similarly determined in all times and all places. This is incorrect, because right and duty have varied in different times and places, under the different social forms accepted by mankind. History and sociology give thousands of proofs of this. Patricide is a duty for certain savage peoples, so that it would not be a crime according to M. Tarde's definition. Infanticide was a right for the ancient Greeks; thus it was not a crime. Nevertheless infanticide and patricide are crimes among civilised peoples to-day. Hence it results that M. Tarde gives

* *Philosophie Penale.* Paris et Lyon, 1891.

a definition of crime, which is variable in time and space, which does not allow of the building up of criminological science.

M. L. Manouvrier has not categorically defined crime. On the other hand he has written on the genesis of crime, or on questions preparatory to the comparative study of criminals and honest people.* And from these pages it seems: 1st. Crime is an act voluntarily committed; 2nd. the acts denominated crimes greatly surpass those punished by the law; 3rd. they are acts injurious to one's neighbour or to society; 4th. crime is not a physiological matter, but sociological, because the value of the acts is entirely a sociological and moral matter.

In his definition of crime, M. Manouvrier implies the idea of reprobation, because he puts in question morality. In some degree this definition of crime agrees with those of MM. Garofalo and Morasso. The question is again one of the injury of sentiment, of the moral sense. We have demonstrated that this definition is unsuitable. On the other hand, the voluntary nature which M. Manouvrier demands to make an act criminal prevents a whole series of impulsive acts, similar to voluntary ones, being classed as crimes. If we seek for the causes of this exclusion we find it summed up in one, the idea of reprobation being implied in the conception of crime. Here again is the injury of a sentiment. Consequently we cannot accept the definition of crime as established by M. Manouvrier.

In a book on the division of social work *(La Division du Travail Social)* M. Emile Durkheim defines crime thus: "Any act which in any degree whatever, causes in its author that characteristic reaction which we call remorse. . . . Crime hurts those sentiments which, in the same social type, are found in all healthy consciences." This definition resembles those of the jurists and of MM. Garofalo and Tarde.

Like M. Garofalo, M. Durkheim bases the idea of crime upon offence to the sentiments. At the same time, he does not define these sentiments as does the Italian criminologist. It suffices him to say that they are to be found in all healthy consciences. Which are these healthy consciences? He would find it very difficult to say. In the case of the Chevalier de la Barre, for example, are the

* *Revue Mensuelle de l'Ecole d'Anthropologie*, 1892.

healthy consciences those of the members of the Abbeville seneschal, and of the Parliament of Paris, or those of Voltaire and the Philosophers? Like the jurist and like M. Tarde, M. Durkheim implies in the idea of crime the violation of a law, a duty, or right. He says, in fact, that crime is an act provocative of a characteristic reaction, called punishment. If there is not this reaction there is no crime. The Esquimaux, as Parry tells us, rob a stranger without the least scruple. There is no penal reaction for this, these thefts are not crimes. At Viti it was a *duty* for the children to strangle or beat their aged parents to death. There was here no penal reaction, these murders are not crimes. In Cafrery it is laudable for a man to beat or kill his wife or children. Again there is no penal reaction, therefore there is no crime. How many analogous facts might we not cite? Numbers are to be found in *L'Evolution de la Morale* (The Evolution of Morals), by C. Letourneau, or in the *Dictionnaire des Sciences Anthropologiques*, in the article "Morale," by the same savant. Consequently it follows with M. Durkheim's definition the same act will or will not be a crime according to place or epoch.

Limiting his definition, M. Durkheim writes: "An act is criminal when it offends the strongly and clearly defined state of the collective conscience," the latter being the total of the beliefs or sentiments common to the average members of the same society. Which are these "strongly and clearly defined states?" M. Durkheim forgets to inform us with any precision. From the definition given by him for the collective conscience, it follows that it is perpetually varying under the influence of an intellectual minority, rebelling against the common belief. Therefore the offence is against a varying conscience. The same act will be a crime or not a crime according to the said conscience, of the same society, at different epochs. Thus the acts committed during the Reign of Terror in 1792-94 are crimes for some and not for others, if we accept M. Durkheim's definition. It will depend upon the instruction received during the scholastic age, whether these acts will have been approved or reproved by historians and professors. In short the definition proposed by M. Durkheim is obscure, and gives an exceedingly variable notion of crime, consequently it is inapplicable for the building up of criminological science.

According to Dr. Gouzer "every act at discord with the society it concerns is designated crime or misdemeanour."* From this conception it follows that the same act may or may not be discordant. This discordance will depend upon the social state where the act is perpetrated. How establish criminological science, if in comparing the authors of similar acts, committed in different times or places, we affirm that here the authors are criminal, but there they are virtuous? Then too who is to decide whether there is discord or not? From M. Gouzer's context it appears that society itself, that is to say, an average opinion of average humanity, is to fix the discord. Upon what basis will this average opinion found its criticism of the discord? M. Gouzer does not tell us at all. It seems that it will be upon the average moral sense common to average mankind at a given moment. Certainly such a basis upon which to establish a conception of crime is altogether inadmissible. The appreciation of the discord varies too much in different times and places. The variability of the acts designated crimes would be too great.

For M. Henri Mazel crime means "every immoral act injurious to society."† Of this idea of crime it will suffice to repeat what M. Paul Adam says of it: "As the author has unfortunately not been able to start by establishing the exact meaning of the word 'moral,' his aphorism cannot but fail. . . . Morality is an unstable thing. Indeed, morals vary according to the momentary ideal of a people. . . . To call crime an act injurious to society would oblige us, for example, to allow the murder of idiots and aged imbeciles. . . . Where shall we find the standard of action injurious to society?"‡ The notion of what is injurious to society is variable with individuals in the same time, and the same place. It varies similarly with times and localities. Similar acts would then be crimes or not crimes. For this reason we reject M. Mazel's definition.

This author has given another definition: Crime is everything that offends the integrity of the individual.§ It would be neces-

* *Archives d'Anthropologie Criminelle*, September, 1893.

† *L'Ermitage*, 1893.

‡ *Les Entretiens politiques et litteraires*, 1893.

§ *Lettre du 15th Septembre*, 1893.

sary to give the meaning of the word "integrity." What M. Mazel means by it is: Liberty, health, life, honour, property, etc. This is somewhat confused, and is open to interpretations varying greatly in different times and places.

For M. Corre:* "Crime is an attack on the rights of others, which are included in the liberty to be and act according to certain conventional fashions for individuals and societies." This savant, by succeeding explanations, enlarges this idea, for he finally calls crime "every injury to the collectivity or to the individual." As synonomous to the word crime, he uses the word anti-social, or an act, with the character of being opposed to solidarity. Since writing this, this criminologist, not satisfied with this definition, has sought to improve on it; he has now arrived at the following: Crime is any act which is both anti-altruistic, and opposed to solidarity (anti-solidaire) or anti-social. These definitions, although preferable to all the preceding ones, still will not suffice. Acts against oneself are not at all comprised among the class of crimes thus described. Besides if the anti-altruistic character is easy to determine, it is different with the term anti-social. The evolution of social forms has no longer to be proved; they change incessantly. Because of these incessant modifications what was anti-social yesterday is social to-day, or will be to-morrow. Thus the conduct of the earliest Christians was *anti-social, opposed to solidarity*, of things existing under the Roman emperors. After Constantine they became *social.* It may perhaps be objected that their conduct was *anti-social*, but not *anti-altruistic*, and that M. Corre requires the two characteristics to constitute crime. But the objection will not stand, for it would be easy to find in history acts bearing at the same time the anti-altruistic character and the anti-social or social character, according to the views held by each individual judge. Thus the murder of Julius Cæsar was an anti-altruistic act, *anti-social* for the partisans of Cæsar, *social* for his enemies. Thus tyrannicide is anti-social for the partisans of the government and a social merit for its adversaries. They have been extolled by many a theologian and many a jurist. Think, for instance, in the 12th

* *Crime et Suicide*, Paris, 1891.

century, of John of Salisbury, of the Bishop of Chartres; in the 13th century, of St. Thomas Aquinas; in the 16th century, of Francois Tolet, Louis Molina, John Poynet, the Bishop of Rochester, Jean Althusius, and how many more.* In 1560 the Parliament of Paris passed a decree against the Huguenots "according to which anyone was permitted to kill them." This was an act at the same time anti-social or social according as one may be Huguenot or Catholic. Poltrot de Méré, killing the duke François de Guise, committed an anti-social act from the point of view of the government, and he was executed; the same was a social act from the point of view of the Reformers, and he was glorified by Theodore de Béze. The murders of Henry, Duke of Guise, and of the Cardinal of Guise by the order of Henry III., were at the same time anti-social or social as viewed by the partisans or the adversaries of the Guises. The murderer of Henry IV., Jean Chastel, was defended by the Jesuits, in the same way as Jacques Clément had been extolled by the Jesuit Guignard. And Chastel, Clément, and Guignard were executed. More recently Vera Zassoulich, attempting to kill General Prepof, committed an anti-altruistic act, *anti-social* for the partisans of the Czar, *social* for all his adversaries. Here are acts—and how many more might we not cite—which, accepting M. Corre's definition, are crimes for some and not crimes for others. To determine crime by what is anti-altruistic and anti-social is to give a variable definition, unsatisfactory for the edification of criminological science.

"That which makes a criminal from the sociological and anthropological point of view," writes M. Ferri, "are his anti-social instincts. . . . The social environment gives form to the crime, but its source is in the anti-social constitution, biological, organic, and psychic. The criminal is the author of an attack upon the natural conditions of existence of the individual and of society. . . ."

It follows from this that crime is an act injurious to the natural conditions of existence, of the individual and of society; it is the anti-social and anti-individual act. This brings us again very nearly to the definition given by M. Corre. It is liable to the same objections. What are the characteristics of the anti-social act? M. Ferri replies, those appertaining to the acts which are injurious

* Cf. E. Nys. *Etudes de droit international et de droit politiques.* Paris et Bruxelles, 1896.—*Dictionnaire de Bayle.*

to the natural conditions of existence for the individual and for society. Then comes this question: What are the natural conditions of existence for the individual and for society? M. Ferri does not say and for sufficient reason. Are all attacks upon the natural conditions of existence for society crimes? If so, we should be obliged to consider as crimes all criticism, all verbal attacks upon the existing forms of society. All innovators and social reformers would be criminals! This consequence of his definition has escaped M. Ferri. Otherwise he would have seen his error. This conception of crime would class successively among criminals the adversaries and the defenders of a similar form of society, first existing and then past.

M. Ferri has also adopted the following definition from M. Colajanni, which is almost the same as that formulated by M. Bérénini: "Punishable acts (crimes) are those determined by individual and anti-social motives, which attack the conditions of existence and offend the average morality of a people, at a given moment." This idea of crime partly resembles those expressed by MM. Garofalo, Durkheim, Gouzer, Mazel, and Corre. It is open to the same criticism. But it is very inferior to Corre's conception of crime. In fact, it pre-supposes not only reprobation but also punishment, and consequently moral responsibility, together with free will, which we have seen does not exist. Further, what are the conditions of existence of a people at a given moment? It is evident that they vary with the moments. In the same way the average morality varies also. It follows that acts attacking such variable conditions, offensive to this variable morality, are themselves variable. The idea of crime then differs with the moment. This variability, according to M. Colajanni's definition, makes us reject it as altogether unsuitable to a place in criminology.

According to Dr. Cabadé—*

"The idea of crime could not be conceived outside life in common . . . a necessity for man. . . . Crime is every act which tends to render life in society difficult or impossible. It is any act the perpetration of which tends to the annihilation of society. It is quite certain that society could not subsist if each of its members were or could be perpetually injured: 1st. in

* *Note manuscrite, inedite.* 1893.

his existence; 2nd. in his property; 3rd. in his intimate sensations, the product of his cerebration and of his heredity. . . ."

In short for M. Cabadé crime is an anti-social act. It is to be noted that M. Cabadé considers an act injuring one member of society as an anti-social act. It is unnecessary to repeat here the criticism we have passed upon M. Corre's definition, which M. Cabadé's greatly resembles.

However let us observe that the majority of criminologists have defined crime in its capacity of injuriousness to society. Those who have done so are: MM. Manouvrier, Gouzer, Mazel, Corre, Ferri, Colajanni, Cabadé, De Greef, etc. Society is an aggregate of individuals united by laws, manners, customs, and common beliefs. Society thus has different forms, according to the epochs and places. Injury to society is therefore really an injury to a social form at a given moment. This injury can only be conceived under two generic kinds: 1st. injury to any individual composing the society; 2nd. injury to the social form proper, that is to say, an attack upon the manners, customs, laws, beliefs of the moment or of the age. Social injury brings us back, in final analysis, on the one hand to personal injury, on the other to attack—most frequently simply verbal—upon the laws, manners, customs, and beliefs. Except in rare exceptions, such as sacrilege, mutilation of public monuments, etc., attacks upon laws, customs, beliefs, etc., if they are not verbal (that is, not made by speech or writing) are at bottom immediate injuries to an individual. Injury to society is therefore both an anti-altruistic and anti-social act, or merely an anti-social act. Under the term anti-social are meant only those against the laws, customs, beliefs, etc.

The laws, manners, customs, and beliefs are perpetually changing. In the same way that in coming into existence, as a distinct individual, the one-celled or many-celled being is inevitably doomed to die and to disappear; just as all social forms established, or on the road to establishment, are inevitably destined to die, to disappear. Every law criticised will certainly disappear. Every custom attacked must change. Every marked opinion cannot help but pass away. Even before they are established as laws, customs, beliefs, or common opinions they are

attacked and criticised. Barely established and the germ of death is already within them.

Hence it follows that social forms are eminently variable. Consequently, essentially anti-social action is also eminently variable in time.

Yesterday a certain opinion was anti-social and to-day it is entirely social. We have an irrefragable and glaring proof of this in all legislation relative to heresies and sacrilege. In 1401 Henry IV. of England published an edict condemning heretics to be burnt at the stake. In 1612, Bartholomew Legate was burnt at Smithfield for opinions very similar to those of the Unitarians to-day."* Saint Louis condemned blasphemers to have their tongues pierced with a red-hot iron. The ordinance of Louis XIV. in the year 1666 decrees: "that those who should be convicted of swearing and blaspheming the holy name of God, His holy mother, or the saints shall be condemned, for the first time, to a fine, . . . the sixth time to the pillory and to have the upper lip cut, and the seventh time to have the tongue cut away entirely." This law, which now seems to us absurd, abominable, and altogether anti-social, was considered quite right and very good by the majority of the people at that period. Even a philosopher, a rebel like Voltaire, wrote a century later: "This law seemed just and humane."† The edict of 1724 punished with death a Calvinist preacher who came to preach to his flock secretly in certain provinces. Multitudes of individuals have been legally burnt for holding opinions then considered anti-social and now held to be social, or at least indifferent. Why cite such names as Etienne Dolet, Giordano Bruno, and others?

The social form is then the ensemble so to say of the laws, opinions, manners, and customs which are ceaselessly being modified. The attack upon this form is therefore eminently variable. If then this kind of injury is defined as crime, it follows that crime varies with time and place. And therefore it cannot serve as a basis for the building up of criminology. The anti-social quality of an act cannot therefore determine its criminality.

Mrs. Clémence Royer has not given a definition of crime. But

* Nys. *Op. cit.*, p. 186.

† *Commentaire sur le livre Des Delits et des Peines.*

she has given one of immorality. And it may be considered as a definition of natural crime in the mind of its author. She writes:

"Every act is immoral which diminishes the possible sum of human life and the sum of blessings or joys of which human beings can or could partake."*

Can one know the possible sum of human life? Then if one could, how can we ascertain whether or not an act diminishes this sum? The same act may be considered as diminishing, or as increasing, the sum of life, at the same period, according to the opinions of the individuals judging it. All political murders, for example, are in this case. The same act will consequently be, at the same epoch, moral or immoral, according as it is considered to diminish, or not, the sum of human life. This variability of immoral crime makes us unable to accept it.

MM. Paul Blocq and Onanoff have sought to give a definitcn of natural crime.† It resembles the preceding one. M. Gaston Danville has lately adopted it. We take the following lines from him:—

"Proceeding from considerations of both biological and physical nature, MM. Blocq and Onanoff insist first of all, that the environment in which human beings find themselves, is in a state of a physically and chemically unstable equilibrium, and that the *function* of human beings is accomplished by their profiting from this changeableness of the equilibrium of their environment, in order to attain their end, conscious or not, which consists in the accumulation of utilisable, living forces, of which they finally dispose to the best advantage. The mechanism with which they fulfil this function is that which they call the mechanism of identification. This consists in fixing to things attributes identical to those of the mental representations to which these same things have first given rise. On the other hand, they point out that the passage of material objects from the unstable physical equilibrium to the stable physical, or chemical equilibrium, always involves a loss of terrestrial energy. MM. P. Blocq and Onanoff, according to this law, categorise the events of this world into two classes, according as they produce an augmentation, or a diminution of the utilisable, terrestrial, living forces. It is under the second of these categories that crime and misfortunes enter. Misfortunes may or may not result from the intervention of man. In the first case, it will be due to a defect of the functional mechanism of the subject, who, then, will have attributed to things attributes not identical to those of the mental representations that he had of them, and this differentiates it from crime, in which functional mechanism is not changed. Crime can then, according to these authors, be defined thus: There will be crime every time that a subject, knowing the attributes of things, shall have

* *Le Bien et la Loi Morale*, 1880.

† *Revue Scientifique* 1890. 2e semestre.

obtained forces for his own personal profit, while diminishing, by the same act, the utilisable, terrestrial living forces."*

We must confess that the theory of these authors, as well as the definition resulting from it, are not dazzlingly clear. That there should be crime, it is necessary and indispensable that the author of the crime should have the idea that his act will diminish the utilisable, terrestrial, living forces. The question then is, as M. G. Danville justly remarks, to estimate an intellectual condition. But he adds: "*This judgment is quite simple*, from the anterior cerebral life, or from the circumstances of the act." How! No, verily not! This judgment is not at all simple. Where is the man who has an idea that one of his acts augment or diminish the utilisable, terrestrial, living forces? We do not believe that there exists one who so reflects before acting. An individual, A., kills another individual, B., in order to appropriate things possessed by B. Evidently A., at the moment when he decides upon his act, has a mental representation of it. At the same time he is conscious of the consequences of his act, that is to say, he knows the act will be followed by the appropriation of the goods coveted. But A. has no idea at all that he is diminishing the utilisable, terrestrial, living forces, nor does he reflect that he has obtained forces for his personal profit. Generally men do not so closely scrutinise the consequences of their acts.

Besides, these utilisable, terrestrial, living forces can be differently estimated. Contrary to M. Danville's opinion ethnic differences affect crime as defined by MM. Blocq and Onanoff. Indeed M. Danville himself writes:—

"The murder of a man, which among all civilised peoples is considered a crime, passes, on the contrary, for a good deed among some Malayan tribes. According to the preceding definition this would be explained as follows: *Murder committed by a Malayan is not a crime*, for the Malayan thinks that a murderer appropriates the virtues of the one he has killed. In him, therefore, the psychic representations of the attributes of things are erroneous."

Then the same act committed in France and in Malay will be here a crime, there not a crime! Then what criterion can we have of the diminution or increase of the utilisable, terrestrial, living forces? Killing an individual evidently diminishes the sum of active utilisable living forces. If the subject realises this,

* *Compte rendu du troisième Congrès d'Anthropologie Criminelle*, 1892.

it is a crime. Good. But A., who kills B., might have the idea that the disappearance of B. would liberate numerous utilisable, terrestrial, living forces. It is true that a tyrant diminishes these forces by his tyranny. An individual who would kill him, would arrest diminution, and even increase these forces. Then there would be no crime, although there were murder, with a knowledge of the attributes of things. The aged in a society are no longer utilisable, terrestrial, living forces. They are exhausted forces. Hence to kill them would not be to diminish the utilisable, terrestrial, living forces; on the contrary, it would be to increase them. It would, in fact, be to render utilisable for all, the things consumed by the useless old men. The murder or robbery of a miser by a prodigal would increase the forces to the personal benefit of the agent. He would not then diminish the utilisable, terrestrial, living forces, for the things possessed by a miser, and, through his avarice, not used, would be used by the prodigal, murderer, or robber. These few examples show clearly that the same act may or may not be crime, according as we consider that there has or there has not been diminution of living forces. The criterium of utility seems to us very difficult to estimate. Consequently it is a bad basis upon which to determine crime. MM. Blocq and Onanoff's definition must therefore be rejected; it will not aid the pursuit of criminology.

IV.

The Definition of Crime.

All the definitions of crime that we have examined in the preceding chapter are to no purpose, and we must try to find one not subject to the variability of sentiments, rights, duties, social forms or ideas of utility. A definition of crime from the points of view of sentiments, rights, duties or social forms implies, in the conception of crime, the idea of necessary reprobation, and as sanction to this blame some sort of penalty. It is this preconceived idea, innate in men—that is to say, acquired by heredity and the educational atmosphere—that crime implies blame and punishment, which has led sociologists to these variable definitions, so unsatisfactory from the point of view of time and space.

To serve as a basis of a science—criminology—crime ought to be defined so to say "in itself." The idea given ought to be suitable in any place and at any epoch whatever, as in physics, gazeous, liquid, solid or dense states are defined. Crime ought to be determined in its essence by the finding of the element or elements in it, which do not change with time or with place. The definition ought not to presume blame nor praise for the crime, because blame and praise for the same act varies with the individuals, the places, epochs, circumstances, causes or effects of the act. Does such a definition exist? We have reason to believe that it does.

First of all, crime is not and cannot be a thing which does or is done; which manifests itself or is manifested. One cannot imagine it an actual thing, consequently capable of being examined or studied. Then crime is an act.

But what sort of act? To what kind of acts does it belong? The different acts classified into family, gender, or sort which can be designated by the name of crime, ought to present a common characteristic; as all things, all beings classed into family, gender, or species present at least one common characteristic with all other things, or beings, of the same family, gender, or

species. We will admit to begin with that this common characteristic is offence or injury. Then we have this commencement of a definition: Every act which wrongs is a crime.

Wrongs or injures whom? Injures what? The reply is easy if we seek it, not in meta-physical entities, such as right and duty, not in human conceptions, such as sentiments, social forms or utility, but in nature itself, that is, what is tangible to our senses. That which exists is either organic or inorganic, that is, endowed with life or not. We will first eliminate all that is not endowed with life, and then we are limited to this definition: Every act which injures any organic body, which has a distinct existence of its own, is called crime.

In zoology and botany "every organised body which lives or has lived its own distinct existence" is called an individual. We can then say in a more concise form, by crime is understood every act which injures an individual. According to this definition all acts injurious to vegetables would be considered as crime. To cut down a tree would be an injury to the tree, a crime. The human mind is not sufficiently refined to regard such acts as injuries, as crimes. The definition is too general. This obliges us to define more exactly the term individual.

The hypothesis arises, that by individual we might mean beings belonging to thè animal kingdom, to animality. Then we should limit the definition of crime to every act injuring the animal-individual, or simply the individual.*

Given the preceding definition, relative only to animal-individuals, one is led to seek the characteristic common to all the individuals to whom wrong done constitutes a crime.

It is necessary to find an indisputable characteristic. Otherwise the want of precision existing in the common conception of crime will still remain. One would be obliged to discuss the injury or non-injury to an individual of every act. Analysing the animal-individual, we find that this common and indisputable characteristic is *liberty*. It is important to define the signification of this

* It might be objected that with this definition, to kill ants, worms, and vermin, etc., would be a crime. That, one would say, is ridiculous. In fact, this act is a *crime*, which does not at all say that it is blamable, praiseworthy, or indifferent. It signifies, purely and simply, that this act injures the individual ant, the individual worm, etc. No one can truly say that it does not injure these individuals. Besides this we might reduce animality to the so-called higher animals. The exposition of the question would thus be greatly simplified.

term applied to an individual. Absolute liberty, independent of all cause and of all influences, does not exist. Consequently we have nothing to do with it.

The individual is determined, for he is subjected to all the influences which the phenomena of nature exercise upon his somatic and psychic organism. He is that which he must be. He is that which he cannot help being, given the natural mesologic conditions which have surrounded him and his ancestry. If he lives in society with others to these physical influences are joined the influences of the social phenomena, and those of the other members of the society. Hence results the exact determination of the somatic and psychic individual. The registration of his impressions and perceptions, the production of his conceptions are the function of these natural and social influences. I mean to say that they are the function of the determining heredity, of the general manner of being of the individual, the function of the climatic, alimentary, educational, and social conditions, which have determined the special manner of being of the individual. It therefore follows that the individual is not free in the registering of his impressions or perceptions, nor in the production of his conceptions. They are what they must be, given all the conditions of the pre-existing and co-existing surroundings of this registering and of this production. The individual does not enjoy the liberty to think or to perceive. But he has the liberty to act, that is, to transform his volition into action. "The individual," says Herzen, "is not to will that which he wills, but he is free to do that which he wishes if no impediment comes to prevent the execution of his volition." This liberty to act exists in every individual without distinction of species, class, or family to which it belongs. Every impediment to this liberty,* every damage done to this property, is an injury to the individual. On analysis, we see that all injuries to an individual are nothing else than suppressions or restrictions upon his liberty of action.

We have now discovered the characteristic common to all the animal-individuals.

* This liberty can be impeded by physical causes, external or internal. Thus an individual wishes to go from one spot to another, paralysis prevents him from putting his volition into action: his liberty is impeded. An individual wishes to eat, and he finds no food, for there is none in the place where he is. He cannot put his volition into action, his liberty is injured. This is an injury, but we do not include it in the definition of crime, because it is caused by physical phenomena, beyond the power of individuals.

This common characteristic is the liberty to transform into action any volition whatever, or, to say shortly, the liberty of action for an individual, or, shorter still, since it is the only liberty existent, individual liberty. So we are at last led to define crime thus: *Crime signifies every act which injures individual liberty.*

This is the definition which I arrive at in a study, published in May, 1893, in the *Archives d'Anthropologie Criminelle.* Numerous criticisms judged it to be too general. They found that it included a quantity of acts, which, though bound by the characteristic of injury, are far removed from one another. Thus accidents would be criminalised. A man at the chase inadvertently kills another man; he would then be a criminal. Some remarked truly that the most legitimate reaction against criminal act would become crime. Many observed that in this manner life was transformed into a perpetual entanglement of crimes. If the attack upon the liberty to act of non-human animals was crime, then it followed that every hunter was a criminal. The castration of bulls, rams, cats, etc., as well as the domestication of horses, dogs, etc., would be a crime. Everyone would then find himself transformed into a criminal. If the idea of criminality did not in the least differentiate from other ideas, there would be no good in employing it.

Already, in that which concerned non-human animals, we had limited, as you have seen, the criminalisation to the so-called higher animals. This restriction shocked some critics, who considered it arbitrary and illogical. This objection is wrong. Every definition implies a limitation of the things defined. We have then a perfect right to limit the idea of crime to a well-defined series of acts, defined by their nature, their object, and their subject. This restriction, made by me four years ago, did not indeed embrace enough, as the majority of our critics find this definition too general.

Most frequently this objection to the proposed definition arises from the idea of reprobation implied in the conception of crime. Our idea of crime criminalised acts which were too differentiated, having only the relation to one another of causing injury. We therefore think it necessary to complete, and render more exact, the conception that we have given of crime.

On the one hand, this precision must be obtained by research

into a characteristic common to all of "the acts which injure individual liberty." It is necessary to define the nature of acts called crimes. On the other hand, this precision must be gained by limiting the subjects who can commit the acts called crimes, and the objects which could produce the acts denominated crimes.

In the state of consciousness of the acts we shall find the characteristic which defines the nature of these acts. So we shall no longer criminalise that class of acts which happen inadvertently. Nearly all that which we call accident will cease to be crime, as it was according to the first definition. I can then say: *Crime means every conscious act which injures the individual's liberty of action.*

It will not be useless to explain the word conscious, which some might take in a meta-physical sense. A conscious act is one of which the author has knowledge at the moment he commits it. An individual, A., kills another individual, B. In doing it, he knows that he strikes him. A. is conscious. A. may be ignorant of the consequences, biological and moral, of the act; that does not hinder him from being conscious, if he has known that he has struck. If, before acting, A. has had a mental conception of the nature of the act, A. has known that he accomplished this act, and acts consequently with criminal intent.

Most impulsive maniacs are unconscious of the moral consequences of the acts they commit, urged by an irresistible force. On the other hand, they are conscious of the act itself. The epileptic, the demented, and the spontaneous or provoked somnambulist, who have the idea to set fire, to kill, or to steal, and who do set fire, kill, or steal, know very well, at the moment they act thus, if not after—for amnesia may supervene—that they are setting fire, killing, or stealing. Often the insane in any degree whatever are ignorant of the moral value of their acts. Often also they are conscious of them. But whether they know them or not they are conscious of the act itself, apart from all collateral ideas. They know the nature of the act that they perform; they are criminals.

An individual A. who is drowning is helped, and he paralyses the movements of his saviour, clinging to him instinctively. Both are drowned. A.'s act is not criminal, because he had no know-

ledge that he was paralysing his saviour. He was not conscious of his movements, that is, of his act.

We say that an act which impairs the liberty of action of an individual is crime when the subject knows that he has committed the act. If when an individual strikes, he knows that he is striking; if when he steals, he knows that he is taking something; if when he sets fire, he knows that he is setting fire, then the individual is criminal, for the act which he commits, and of which he is conscious, is a lesion to the liberty of action of an individual. Every individual conscious of a hurtful act is criminal on account of this very consciousness.

This interpretation of the word crime is more restricted than that given by me in 1893. It eliminates a whole range of acts certainly hurtful to the individual object, but that were committed by the individual subject without his having knowledge before acting of the injury that would result from his act. We can then now write: *Every conscious act which impares an individual's liberty of action is crime.*

This idea admits of only one hypothesis, with regard to the author, that he is a conscient being. Hence it follows that he is an individual endowed with animality, and to one section only of animal life. He belongs to the fraction of animality, which possesses an organ, giving him consciousness of the acts he commits. The subject must then, by the very definition of crime, belong to the class of animals, provided with a brain, the organ giving consciousness of action. The limitation of the criminality of an act is still very wide. It is indeed too wide, for it criminalises all individuals possessing a brain consciously injuring any other animal-individual whatever. We must restrict it. For this, we must give our attention to the individual who is the object of the injurious act.

We will start with the hypothesis that the injury to be criminalised must have for its object an individual of the same species as its subject.

On the terrestrial globe, all is in a state of perpetual organisation and disorganisation, a permanent integration and disintegration, an eternal transformation. All species maintain their lives at the cost of other species. It is a strife without end.

If the simple fact of conscious injury to an animal-individual sufficed to produce crime, it would follow that all the carnivora, almost all animals would be criminals. Then the words crime and criminal would be useless for they would not differentiate either acts or people. This is a reason for wishing to limit the idea of crime, by defining the individual objects of the injury. By the hypothesis that the object must be of the same species as the subject we exclude from the idea of crime all injury to individuals of a different species.

Then for man to kill oxen, sheep, pigeons, etc., to domesticate horses, dogs, etc., is not a crime.

The tiger hunting, killing and eating the antelope is not a criminal. The ant domesticating certain grubs does not commit crime.

But a man who kills, wounds, or robs another man, commits crime. A tiger attacking, killing another tiger, commits crime. An ant killing, robbing other ants, commits crime. A bee robbing the honey from other bees, commits crime. This idea allows us to regard as criminals animals of other species besides human beings. Here we agree with the Professors Lombroso, Lacassagne, Letourneau, who have shown that ants, bees, etc., commit acts of a criminal nature. This definition limits criminality to the range of animals of the same species. Consequently it restricts the definition of crime and the number of criminals. It is no longer all beings of every species or of one species that can be qualified as criminal. It concerns only more or less numerous exceptions.

We are now brought to this more complete definition: *Crime is every conscious act which injures the liberty of action of a similar individual of the same species.*

This definition is more precise, more exact than that previously given. It is also clearer. In fact, the judgment of the mental state of the subject is easy. It is sufficient to know if he had knowledge of the act himself, freed from all collateral ideas. The knowledge of the species of the subject and object is also very easy. We have therefore a clear, precise, exact idea of crime. Let us see now if it is satisfactory, that is, if it answers to all the acts commonly qualified as crimes.

Murder, assassination, violation, wounds, blows, mutilation, rape, and imprisonment suppress or restrict individual liberty in a permanent or temporary manner. Therefore they injure it; and by the definition they are crimes. To define them as crimes I have no need to consider whether these acts are good or bad, social or anti-social, contrary or not to a sentiment, admitted or not by custom, useful or not. They and their author are conscient, and by this fact they are crimes.

The destruction of things by any means whatever (incendiarism, explosion, etc.), robbery with or without abuse of confidence, with or without burglary, swindling, extortion, bankruptcy, forgery, plagiarism, all facts known as crimes or offences according to law and to the criminalists, are included unmistakably by the definition just given. In fact, these acts suppress or restrain, in a permanent or temporary manner, the liberty of the possessor of things destroyed, stolen, swindled, extorted, plagiarised, forged, etc. The dispossessed individual has no more the possibility of turning these things into sources of enjoyment. His liberty is therefore certainly suppressed or limited by these acts. Therefore they, being executed consciously, injure it, and by the definition they are crimes, without considering whether they offend any sentiment, or violate any right, duty, or social contract. They hurt, and by this fact they are crimes.

This rapid analysis proves that all the deeds commonly called crimes are certainly included under the definition of crime given by me. But the acts mentioned above are not for the philosopher the only criminal acts. "The list is long," writes M. Manouvrier,* "of all the crimes not forbidden, that is to say, permitted and tolerated by the code, and of a gravity at least equal to the smallest legal crime." Let us see whether these acts permitted by the code, but forbidden by a refined morality enter into the category of acts, criminalised by our definition.

Calumny, bad faith, lying, hypocrisy, wronging, deceit, abuse of power, etc., are acts which suppress or restrict individual liberty. Consequently these conscious acts injure liberty, and by the definition they are crimes.

* *Archives d'Anthropologie Criminelle*, 1892, p. 567.

Not considering who the author may be, this definition classes among other crimes murder, wounding, mutilation of oneself by oneself, that is, suicide, masturbation, etc. That the acts should be criminal there is no need that any of the motives intervene of social convention, injury to the community, or infractions of natural laws. It is sufficient to note that they injure individual liberty to stigmatise them as crimes. It seems that there is no single immoral act which cannot be comprised in the class of acts defined as crimes.

The definition: "Every conscious act which injures the liberty of action of an individual of the same species is a crime," therefore seems precise, clear, satisfactory, and general. It has been established without regard to any idea of good or bad, of infraction of sentiment, custom, or law. It defines crime in itself, for it frees it from any collateral idea, whether causes, aims, social conventions, reprobation, approbation or indifference. It suits equally well for all times and in all places.

Some have objected or may object that, by its very generality, this definition allows us to class among crimes many acts daily committed. This is true, but this is no impediment to its adoption. In fact, this objection arises from the general idea that all crime implies reprobation for the act and its author. The definition that I propose, it cannot be too often repeated, does not assume any element than the act in itself, the knowledge of the author that he has committed it, and the common species of the subject and object. Approbation, disapprobation, responsibility, irresponsibility are all special elements not allied to the act in itself, to the consciousness of the author, or his physical and social surroundings. These are variable elements which cause the same act to be approved or disapproved according to time or place, and in the same time or same place, according to the determining circumstances and the general state of mind. A few typical facts will make this clear.

Some men consciously kill another man—this is crime. In seeking for the causes and the aim, we note that the assassins were a prey to famine, in shipwreck, for example, and they killed to sustain their existence. It is evident that this crime cannot be reproved. A man steals consciously: this is crime. Looking

for the cause and the aim we find that this man has stolen food and clothing, because being without bread or garments, he was almost dying of hunger and cold. It is evident that this crime cannot be reproved; I would even add that it ought to be praised.

War cannot be at all without individuals being killed, wounded and mutilated, things destroyed, robbery, and all that is done consciously; therefore it is crime. A great number of people do not consider it reprovable nevertheless; some glorify it, commemorate its authors; others condemn it, and brand its authors.

A man steals consciously; this is crime. An etiological examination shows that he has robbed to increase his pleasures, which already surpass those of the average of mankind. The generality of men blame the crime and the criminal.

A man consciously adulterates alimentary or other products; this is crime. He has done it so adroitly that his acts are legal. The crime and the criminal are approved by many, blamed by a minority.

A man consciously appropriates more estate (property), movable or immovable and consumable goods than are necessary for his existence: this is crime. In fact, he takes from other men all which he has in excess, consequently he injures the liberty of other men to satisfy their desire to enjoy these goods. This is the rule in the present human communities. The crime is conformable to custom, the criminal is esteemed except by a minority.

A man possesses other men as goods, *i.e.*, slaves: this is crime. But a short time past that was conformable to custom, and did not wound public sentiment, consequently did not incur reprobation, while to-day the majority of men condemn the act.

A man abuses the power which a united public have freely conceded to him for a certain end; a man retains this power in spite of the public; a man takes possession of power contrary to the will of the public: these are crimes, for these individuals are conscious of the acts they commit, although they are often not conscious that they injure the community. This is the rule in present societies. The majority of men find these acts good for they are conformable to custom; their authors are always honoured, sometimes glorified.

A man rebels against the community: this is crime. An etio-

logical analysis shows that the liberty of the author has been injured by the community, acting thus criminally with regard to him; we note that the aim of the crime was to provoke a modification of the social contract in such a way that the well being of everyone would increase. Some blame the act and punish the criminal; others praise the act and glorify, or even deify, the criminal.

These few examples show the impossibility of determining crime, if one implies to it the idea of reprobation or approbation, for according to the epoch and the place crime and criminals would vary. There would be no means of studying criminality as fixed in time and space, using the comparative method so fruitfully employed by the anthropologians.

By its very generality, the definition I have given allows of the comparison of criminal forms in all epochs, among all human beings, and even among animals. The generality of this definition uniting not only individual exceptions, but relatively masses of individuals, adds a considerable interest to criminology, not only from the speculative point of view, but still more from the practical side. From these criminological studies conclusions, in fact, will arise not only with regard to the exceptions, or teratologic instances, but with regard to the mass of mankind. Furthermore, although crime may not be a function of the appreciation of action, the criminologist will be able to judge of the criminality of a community, at a given epoch, by the opinion held regarding the criminal acts by the community at that epoch. In fact, the approbation of an act shows the possibility of approving the committal of that act.

Some have objected or may object that the proposed definition, resting entirely on the individual, does not apply to acts injuring the community. This objection will not stand, for we do not think it would be possible to imagine an act injuring the community without at the same time injuring the liberty of one or more individuals. In fact, it is impossible to injure a whole—the community—without injuring some part—individual. This is not only a truth but a truism.

The community is only an assemblage of the individuals who compose it. By the fact of the life in common arise in individuals

the qualities specially appertaining to this common life. Therefore the community is not exactly the arithmetical sum of its component parts. New characteristics are developed there due to the aggregation of the individuals in the society. Nevertheless, this society does not constitute one organised being, altogether analogous to the organisation of an animal. One cannot regard an individual as a cell and society as a pluri-cellular animal. Society is not an entity, a whole that we can study independently of the individuals who form it.

Society has not a life of itself. One cannot conceive an injury to it of itself. But, on the other hand, we can easily conceive the possibility of injuring an individual in the qualities specially acquired by life in common. These injuries restrict the liberty of action of an individual, and then if they are committed consciously they are crimes. If we examine minutely so-called anti-social acts, that is to say, injurious to the community, we notice that there is not one that is not injurious to one or more of the component individuals. In the final analysis, these crimes against society are tantamount to injuries to an individual's liberty of action, that is, to crimes according to our definition. Hence it follows that M. Corre's idea of crime is altogether included in our own.

It has been objected that crime is not an act, but the qualification of an act.* With M. Corre,† we would reply, let us not cavil over words. Crime applies to acts of a certain kind or nature. It is necessary and inevitable that it should be so, for a definition is only the qualification of a series of things, acts, or conceptions, bound together by one or more common characteristics. Consequently it is a qualified act.

Crime is an act, and we cannot otherwise conceive it. Nevertheless it has been objected that crime cannot be an act for then abstention from acting would never constitute a crime. Thus a mother neglecting to care for her new-born child commits a legal crime. This however is not an act but abstention from acting. The objection will not stand. Abstention is in reality a mode of action. We might say it is a negative act. In the above example,

* *Archives d'Anthropologie Criminelle.* September, 1893.

† *Revue internationale de bibliographie médicale.* 25th October 1893.

the mother is solicited to give care to the new-born child. She does not yield to this instinct. I would say to this hereditary tendency inherent in her—if she resists this impulse to nurse her child it is in consequence of a series of more or less conscious deliberations. She is thus led to the wish not to nurse it. She consciously resists her tendency to nurse her infant. The resistance of an act is a different mode of action, a negative act. The abstention is manifested, is done just as an act. Crime being defined as an act, to object that abstention would not be criminalised is therefore absurd.

Perhaps, the following objection might be raised against our definition. Depending entirely upon the individual characteristic of liberty of action, it follows that by the very fact of individuals uniting in communities, they are criminal, because they consciously injure their own liberty of action. In other words, every convention binding men together in communities is criminal. The logical consequence would be that one could not accept such a definition which would criminalise all social conventions.

In fact, all social conventions are thus criminalised, but that cannot cause the rejection of the proposed definition. This deduction comes purely and simply from the innate idea that crime implies reprobation. Apart from reprobation, what does it matter if social conventions be criminal? Evidently that is of no importance, and logically the given definition is admissible. Even attaching the idea of reprobation to crime, the definition stands good, for the only rational consequence would be to seek for a social convention the least possibly injurious to individual liberty. Thus the criminal character of this convention would be reduced to a minimum, which minimum even would disappear if the convention were the result of the wishes of all the individuals composing the community, not brought about under the influence of force, but by that of reason. If the social convention is the result of all the wills, there will be voluntary acceptation of the convention by all the individuals. Then each individual is free to act according to his own will. His liberty of action is not injured by the social convention. And then the latter is not criminal. The idea of reprobation being implied in crime, is it not evident to every individual of refined mind that all social con-

vention imposed on men, contrary to their will, injures them, and is in truth criminal?

This criminalising of social conventions, as much present as past ones, cannot make the criminologist reject this definition. As a man of science, he ought to seek a serious basis for analysis, a common measure for the individuals he wishes to study. This measure found, he ought to analyse the acts measurable by it, their causes, their authors, and their aims. From this analysis he should make a synthesis, and from this synthesis he should draw logical conclusions without troubling himself as to how they may be contrary to social conventions admitted by some, endured by others; without minding whether they throw discredit or not upon present social conventions. If he foresees that this common measure, this analysis and synthesis will lead him to conclusions by which his personal or class interests will suffer, and on this account he refuses to accept this measure, then in him the love of social privilege surpasses the love of science. Personal or class interest has obscured the desire for truth which ought to characterise every man of science.

Perhaps it may be objected that this definition exaggerates the importance of the individual at the expense of the community, and leads inevitably to the prevalence of the former over the latter. This prevalence might lead to individualisation, altogether opposed to the general tendency of men towards an ever-increasing solidarity. From that it would follow that: Humanity seeing in crime an act that one ought to prevent and reprove—the effect of present and ancestral education—would be led to exaggerate the notion of individuality and atrophy that of solidarity, which would be bad alike for society and the individual.

This objection comes from the erroneous idea that individualisation is opposed to solidarisation.

A community is the resultant of any number of component individuals. It is evident that this resultant will be the more moral the more each of its component parts are of a refined morality. The individualisation of these component parts is the *sine qua non* of this moralisation, this refinement. In fact, every individual having a high idea of his liberty of action, and consequently of the desire to enjoy it, if he unites with other individuals to form a

community, having themselves all this idea and this desire, is led inevitably to limit his liberty of action. He naturally finds this limit in the liberty of the other component individuals, that is to say, that his liberty of action is limited to those acts which do not injure the liberty of other component-individuals. This exaggeration of the individuality, if experienced by all the members of the community, far from leading to the atrophy of solidarity, increases it, on the contrary, because an individual is never more united with others of the community than when equality exists between them. Now, all the individuals having an elevated idea of their own liberty would necessarily consider themselves as equal, and, in the convention constituting their community, the same rights and duties would be for all. Each of the component individuals, reproving crime, would be led not to commit it, so as to be the equal of the other component individuals; he would have the same rights and the same duties; he would know that none of the community would act otherwise towards him than he could do towards them. The moralisation of the individual would therefore be considerable, and the community composed of such individuals would necessarily enjoy the same degree of morality.

Hence it follows that the definition proposed leads to heightening of individuality; and attaching the idea of reprobation to crime —that is to say, passing on to the moral plane—we see that it leads to the increase of morality in the individual, and consequently in the community.

We have seen in the preceding chapter that every conscious act is a manifestation of mental activity. We know also that this psychic activity is inevitably determined, that it is the effect of multifarious causes, the resultant of innumerable mesologic components.

Therefore, let us point out that, by the definition itself, which we have found for crime, its nature is fixed. It is a conscious act, therefore it is the product of cerebral activity. It is one of its manifestations, and consequently it is inevitably determined.

Every act is the product of all the exterior conditions acting upon the subject-individual, himself the effect of all the conditions affecting a long series of ancestors. Crime is then also this product. It is the fatal resultant of the component environments

—atavic, hereditary, familiar, professional, social, climatic, and cosmic. It is an effect of the combination of the organic disposition of the subject, with the thousand exterior influences.

If the definition of crime indicates its nature, it does not do it at all with such precision that we should immediately know whether the crime is the result of deficiencies in the mental organisation, a phenomenon resulting from atavism or from regression. M. Th. Ribot has conceived crime to be a result of defects in the cerebral organism. He has compared these deficiencies to the deprivation of a limb or physical function. For others crime proceeds from psychic anomalies, atavic phenomena, or anomalies similar to those of the insane. Are these conceptions of the nature of crime exact? Is the criminal insane? The knowledge which our definition gives of the nature of crime does not enable us to reply to these questions. To do so it will be necessary to study the criminal in all the various forms, according to its order. This I propose to do in a series of studies on political, professional, and ordinary criminals.

That which we henceforth know is, as M. Ferri has pointed out, that crime is the effect of anthropologic, physical, and social conditions, which act simultaneously and inseparably to the determination of the act.

V.

Criminal Responsibility.

"The reflex instinct of defence," says Letourneau, "is the biological root of the ideas of law and justice, since it is evidently the basis of the first of laws, the law of retaliation."* The human being, like the animal, when struck instinctively, gives back blow for blow. He acts automatically, and this is the case not only with the savage, but even with cultured individuals. Almost always on receiving a sudden blow, he will immediately strike back, only perhaps striking less hard than a savage, or an animal. With these latter the act is not deliberate, the reflex action unrolls after the manner of a spring. The reaction immediately follows the action without the intervention of reflection. The author of the act immediately suffers the reaction provoked by his act. Darwin relates the following fact which well illustrates this assertion: —

"A Fuegian and his wife were occupied in fishing for molluscs and other inferior marine animals on a sandy shore among the rocks. They had collected a basketful. Then it happened that their little child knocked over the precious basket. Immediately the father seized his child and pounded his head upon a rock."†

The father had responded immediately to his child's act without the least deliberation. It is in this instinct of defence that we find the idea of justice, which is accompanied by the idea of responsibility. I do not mean by instinct a special faculty put into us by a creator. I mean a state peculiar to certain acts and sentiments which the habit of acting or feeling has made penetrate into us little by little. Like that which is innate, instinct is only the registering, the incarnation or incrustation on our nervous centres of a certain category of acts or sentiments commonly produced. This registering in the nervous cells comes to be executed, or produced spontaneously; I might say automatically, independently of consciousness.

* *Evolution Juridique*, p. 10. † *Voyage of a Naturalist.*

Then the instinct of defence, of self-protection, causes the primitive man, like the animal, to give blow for blow. The author of the blows is responsible for it. He is the director of it, he must suffer the consequences. The author may even be an object, an inorganic thing. The animal wounded by a stone, or by an arrow, seeks vengeance of the stone or arrow. It considers it responsible for its wound. In the same way a savage imputes animation, a breath, a something or other to be in everything that injures him. He will beat or strike at a rock, a tree, or a river which has wounded or injured him in any manner. The rock, tree, or river is responsible for this injury, by the very fact that by falling it has wounded him, or that the river has submerged his canoe. Responsibility arises from the simple attribution of an act to some being or to some object. This primitive idea of responsibility is to be found still among our present savages, among our children, whom we have often seen striking the objects, against which they have knocked themselves. It is less than two centuries ago that in our country animals and corpses were considered responsible.

To the reflex action of pure defence, to the replying of blow for blow, succeeded the postponed reply. The idea of vengeance appeared. With M. Puglia,* and contrary to the opinion of M. Ferri,† we think that the immediate reaction of blow for blow, and the deferred reaction of vengeance correspond to successive prehistoric epochs. Certainly the great principle recurring everywhere, *natura non fecit saltum*, applies here too. It is impossible to imagine a clean line of demarcation between these epochs, for the different modes of reaction get entangled, for the modification of organisms only takes place progressively. Therefore, doubtless, immediate reaction (blow for blow), deferred reaction, and vengeance have co-existed in the same period. Necessarily the forms existing at one epoch are derived from forms previously existing, and this succession takes place insensibly by a series of encroachments of one form upon another. If these two modes of reaction are found in the same epoch, it nevertheless seems certain that the one has preceded the other. The deferred reaction of long expiration *could not* have arisen at the same time as imme-

* *Evoluzione storica i scientifica del diritto e procedura penale.* Messina, 1882.

† *Sociologie Criminelle*, p. 297.

diate reaction, for it corresponds to a different psychical condition. In fact, there could not be deferred reaction, vengeance, if there were not memory. Now at the moment when man is freed, but barely evolved from animality, his memory cannot be in more than an embryonic state. The cerebral development being slight, reflection commences to prevail over instinct, voluntary acts sometimes replace involuntary acts. Now, deferred reaction necessitates memory, which itself implies a state of reflection, the voluntary effort to react upon an annoyance, at a greater or less time after it has been experienced. There is therefore greater cerebral development in a human being who avenges himself than in one who strikes back spontaneously. The reaction has ceased to be reflexive when it becomes reflective. There is therefore a succession in the genesis of these modes of reaction, although they inevitably co-existed.

Vengeance was at first individual, both in point of view of the subject and of the object. The injured individual considered the author of the injury as its sole source. He attacked him alone. The author of the act was alone responsible. The idea of responsibility has always been attributed to the author of the injurious act, whether he were animated or not, certain or presumed.

But man developed cerebrally, he congregated with his kind, he became a social animal. The need of association, under the pressure of a thousand surroundings, little by little encrusted, inscribed itself upon his mental organism, producing the sentiment of sociability. The mental power grew in these new conditions of life. The power of reflection developed. The association of ideas extended. The human being perceived that he could also avenge himself by taking things or creatures possessed by the author of the injury. The circle of action for executing vengeance extended beyond the individual author to the things, animated or not, belonging to this individual. He who avenged himself sought to reach his enemy by destroying or taking his arms, his fishing or hunting implements, the fruits of his chase or fishing, his slaves, his women, his children who most generally were confounded with his slaves. Hence arose civil and pecuniary re-

sponsibility. The injured sought to repair, or to secure reparation for the wrong he had suffered.

But humanity progressed. The injured individual perceived that he could avenge himself upon any individual, belonging to the group of which the author of his injury was a member. The group as a whole to which the injured belonged, recognised that this individual wrong affected it collectively, for it weakened the group in its entirety. Thus collective reaction ensued. And thus collective vengeance arose and developed. But the sentiment of solidarity grew with it, for it was necessary to resist the numerous attacks of groups upon one another. Collective vengeance gave birth, on the one hand, to war, where the strife was external, on the other hand, to judicial machinery, where the strife was internal. The regulation of vengeance, collective and individual, was soon instituted to avoid the dispersion of the units grouped, the dislocation of groups, and the disappearance of individuals. Vengeance gave place to retaliation.

Responsibility was no longer merely individual, it became collective—and for very long it was so—tribal, patriarchal, local.

In Persia, Assyria, and India the wife and children of the criminal were subjected to the same punishment as he himself. In China the penalties bore the collective character. It was the same with the Jews, for in Deuteronomy we read: "The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers; every man shall be put to death for his own sin" (ch. xxiv. v. 16)—from which we must infer that it existed amongst them before.

In England, before the tenth century, the wife was punished for her husband's crime. In the eleventh century the whole guild was accountable for the crime of one of its members. At Rome, in Mexico certain religious crimes entailed not only the punishment of the family, but also that of their native town. In Germany the neighbours were responsible. In France, even in the eighteenth century, the family of a regicide was punished. The relations of Ravaillac, of Damiens, were banished. The criminal ordinance of 1670 admits that the communities of cities, boroughs, or villages can commit crimes, the syndic then personifies them. It is subjected to interrogation and to all the

phases of judicial procedure. On the eve of the French Revolution, in 1789, some of the Cahiers demanded the preservation of *lettres de cachets* on behalf of family interests. "It is very necessary," says one of them, "to support the precedent which renders the family responsible for each of those who compose it, especially among the nobility."*

Extending to the group the responsibility it ceased to have for its basis a simple attribution; to this was joined, though certainly vaguely, the sentiment of social similitude. The individual or group, which avenged itself upon another collective group, thought that each individual of the latter was like the particular author of the offensive act, was liable to commit, even would have committed, approved, and urged the act.

Retaliation developed, at length was established. This was the "eye for an eye, tooth for a tooth" of God's people. And it subsisted somewhat in fact, surviving in spirit, for in the eighteenth century Kant still writes: "Only the law of retaliation can exactly fix the quality and quantity of the penalty."† Of this, analysis will discover the traces, even yet in many of our acts. Retaliation was gradually effaced, it disappeared, interest being rather in the modification of vengeance into ransom. Retaliation was codified. A scale of responsibilities was drawn up. Responsibility remained entire, intact, but the measure of reparation varied according to the damage.

Naturally all these modes of reaction against injury, from the reflex blow for blow to ransom, followed the custom of retaliation, were realised successively in the course of time. But the preceding modes intruded upon those that followed, subsisted conjointly, and even now in our civilised societies, we can see the reflex action of the animal—hardly a man—the reflective and individual action, collective vengeance (patriarchal, national, and professional) then codified ransom, etc. That which differentiates the epochs from one another is the addition of a new mode of reaction, the growth of this mode, the diminution of the preceding modes.

Humanity developed. The law of retaliation was modified,

* Desjardins. *Les Cahiers des Etats généraux.*

† *Métaphysique du Droit.*

transformed by a slow process into various customs, then into laws, and finally into codes. *The right* to punish was derived insensibly from the *fact* of punishing, and gradually built itself up to what it was—wholly and proudly maintained—until some forty years ago.

Responsibility, first based upon the attribution of the act itself, was slowly, but steadily, restricted. Inorganic objects were first recognised to be irresponsible; even the child as it grows ceases to strike the tree against which it has hurt itself, while having a grudge against the pebble which has made it stumble. Then animals and at last human corpses were exempted. But, how slow the process! Up to our civilisation we meet with the responsibility of animals and corpses. Without recalling Xerxes, who beat the sea, have we not a multitude of animal processes of law carried on with all the requisite legal procedure. Under Francois I., at the time of the master Rabelais, the cause of the caterpillars was pleaded against the farmers. In 1396, at Falaise, a sow was hung by the executioner, because it had eaten the face of a child. In 1474 at Kahlenberg a cock was judicially burnt, for having laid an egg, which also was delivered to the stake. In 1552 the judge of the Chapter House of Chartres condemned a hog to be hung, having been guilty of killing a girl.* In 1619 at Hédé (Ille-et-Vilaine) a mare was solemnly burnt together with the individual who had committed the crime beasiality with it. At the close of the seventeenth century in Brittany several corpses were condemned to be hung or exposed.† And to this day, can we not see in the executions in effigy a sort of survival of the idea of responsibility in inanimate things? Let us remark, in passing, that this responsibility is a consequence of the idea which our prehistoric ancestors had of the things which hurt them. They animated everything, imagined dimly a breath, a something undefined, in every object.

On the one hand, then, responsibility was restricted, on the other it was extended. From the individual to whom the act was attributed it came to include the relations, the companions of the individual, lastly the whole group of which he was a member. It

* Letourneau. *Evolution Juridique*, p, 476

† A. Corre et P. Aubry. *Documents de criminologie retrospective*, pp. 465, 377-382.

was based upon the charge of complicity covering the entire group of like beings, to which he belonged. But with legislation more or less codified, another process evolved. Responsibility tended to become again individual. Not to affect anyone but the author of the offensive act, nevertheless to-day in customs, if not in codes, the idea of collective responsibility still survives. The causes however have disappeared. Strife is less brutal, resistance is less, solidarity is not so strong. Still the idea holds ground, although it grows feeble. Lazare Carnot could say, at the end of the eighteenth century: "There are no innocents among the aristocrats." He thus affirmed the responsibility of the class, as did Emile Henry in 1894, when he wrote: "Among the middle class there are no innocents." Public opinion still to-day accuses the relations of a criminal, who very often require to change their name. There were examples of this at the time of Captain Dreyfus's case for treason. When the delinquent is a member of a closed profession, of very distinctive character, such as the magistrature, the clergy, the military, or of a profession exercised by a very small number of individuals, as the Parliament, or bodies constituted by the State (engineers, etc), all the corporation, the "body," is concerned in the eyes of the public, and of the members of the body. And many of the latter, to conceal these crimes, commit new ones in party spirit.

Collective responsibility survives still in the relations between nations. Thus a whole country is responsible for an act committed by one of a nation, in certain cases. War sometimes is the result of this responsibility. In time of war, when one soldier commits cruelties, all the soldiers of the same people are responsible. In colonial wars, civilised officers have committed or allowed the same cruelties to be committed as are committed by the indigenous troops. All are responsible. In Algeria and Tonkin this has been established as a rule. It is a mode of government. In these acts of collective reprisal is joined the idea of intimidation. Collective responsibility is then far from having disappeared. It is in course of disappearing, but in the Russian code, established in 1885, the confiscation of goods is pronounced upon certain crimes, and this concerns not only the individual reputed guilty, but also those belonging to him.

The exclusion of animals from the field of responsibility brings into full light the fact that the mere attribution of the act could not serve as a basis, and that there also existed another element. Its germ was contained in the simple idea of attributing the act. This element was the possibility of wishing or of not wishing to commit the act. The author of the act was imputed to have wished to commit it. This idea, at first vague, indeed excessively vague, was in time analysed, and systematised by the philosophers and theologians. And the legislators relied upon it as a basis for moral responsibility. Analysing and systematising led to the belief that human beings had an essential gift, that of free will, or free judgment. Attribution pure and simple, or objective responsibility pre-existed before subjective responsibility. From the daily experience of facts, man has drawn, or distilled, little by little the abstract idea of moral responsibility. This has not produced individual or collective reaction following offensive action; it is, on the contrary, the product of it. Moral responsibility is only the systematisation of the facts of attributive and reactive defence.

M. Tarde* has with justice remarked that one finds free-will at the base of all theories of responsibility, whether the avowed theories admitted it or not. The *sine quâ non* of moral responsibility is moral liberty. This is so true that, wishing to maintain the conception of moral responsibility, determinist philosophers and theologians have tortured their minds to discover somewhere a liberty which could serve as a ground for responsibility. Rare were those who, like Amaury de Rennes, in the twelfth century, dared to maintain, in the name of the Christian doctrine, that, "for man there is neither merit nor demerit."†

They preferred more frequently to do like Kant. This illustrious meta-physician imagined a liberty existing in the world of nonmena, and he believed by this logomachy. M. Fouillée, although a convinced determinist, created a full-fledged liberty which does not exist, as he himself avows. But he required it to maintain a responsibility which would fall to pieces without it.

"We can hardly," says he, "place the ground of moral responsibility in a

* *Philosophie pénale*, p. 12.

† Cité par Franck *Essais de critique philosophique.*

completely ideal liberty, nor in a perfect liberty like the free-will of the spiritualists. This liberty is in our eyes an end, not a cause, properly speaking. In one word, moral legitimacy can hardly be deduced, in our opinion, from an ideal liberty, conceived as a principle of right, and its social legitimacy may be inferred from the common acceptation of this ideal by contract."*

M. Siciliani admits a relative liberty, of a vague despairing nature, always for the simple object of giving a solid foundation to an unsteady responsibility. M. Delbeuf, a defender of free will in this same sense, reduces it to an uncertain, wavering and dilatory faculty, a sort of suspensive veto, which vacilates far too much to be the basis of moral responsibility.

In philosophic theories, then, responsibility always rests upon free-will. The Abbé de Baets says formally:—"Imputability has no solid basis except in free-will; he alone can be held responsible for his actions who can determine them by his own choice."† Legislators have followed close upon the footsteps of philosophers and theologians. They have been inspired with this view in the compiling or codification of their laws. A magistrate, M. Fabreguettes, justly remarks that, "all criminal legislation, ancient and modern, is based upon the idea that man is born with a double faculty, included within conscience, the one to know the good and the bad, the other always to choose between the good and the bad."‡ Yes, all codes are formed upon this idea that free-will and responsibility are indissolubly united.

In order to determine individual responsibility it is not enough to attribute the mere act. The individual to whom the act is attributed must also be possessed of free-will. Here lies the basis of responsibility as it is now generally (officially) conceived in our codes and our standard of morality.

Logically the right to punish follows this moral responsibility. The individual was free to wish or not to wish to perform an act, he ought then to be punished for having executed this act. He ought to be punished, that it may be a lesson to him and to others, and, above all, that he may expiate his crime. In fact, this process actually followed by man has conceived and developed the idea

* *Science social contemporaine*, p. 282.

† De Baets. *L'école d'anthropologie criminelle*, pp. 39, 41.

‡ *De la responsabilité des criminels*, p. 3.

of God, of a super-natural world. Thus expiation becomes necessary; it does not matter whether the penalty be exemplary or educative, it matters that it be an expiation. Physical or moral pain inflicted upon the author of the injury is no more a simple reply from an individual or a collection of individuals. In the course of time there have been transformations, and this pain has been regulated, codified. It is an expiation, a thing agreeable to the supernatural powers, but it is tinged also by educative influence for the sufferer of the penalty and for others. But this is not the place to examine the evolution of the laws of punishment or of the morphology of penalties. It is sufficient to indicate that the law and modes of punishment are derived from responsibility and the idea of expiation.

To be responsible it was not only necessary to be the author of the act, but also that the author should be *compos mentis*. All animated beings have been so considered, for we have seen animals gravely and judicially condemned and executed. But the spirit of examination is constantly developing, and there are restrictions to this responsibility. A minority, the vanguard, continually arrives at this result, to show by analysis the irresponsibility of many delinquents. The jurists, faithful guardians of tradition, resisted. But under the incessant efforts of the progressive human mind, the responsibility of animals was swept to the winds and ultimately disappeared; then that of human corpses, although the laws concerning them still remained unrepealed. They fell into disuse, buried in the thick forest of laws and regulations. But in the field of responsibility the tendency to restrict actively continued. And some sought to exclude the mad from the rank of the responsible, claiming that in madness the individual was not *compos mentis*. The jurists always resisted. In France, in the eighteenth century, the judge had no investigation to make upon this point.* He did not inquire whether the delinquent was sane or not. In 1616, for example, the president of the parliament of Bordeaux, De Lancie, sent female maniacs to the stake, giving for his reason that "it is a monstrous thing to see more than forty women in the church who bark like dogs, making together so displeasing a concert and music in the house of God,

* Fabreguettes. *Op cit.*, pp. 9, 10.

that others cannot remain in prayer."* It is sufficient to take the trouble to peruse hundreds of law-suits concerning magic, sorcery, or other analogous equally intangible crimes to be amazed at the ease with which poor beings were condemned to the stake,† guilty only of possessing an unbalanced nervous system, and of living in an age of profound ignorance.

Nevertheless, the idea of the irresponsibility of individuals slightly mad already germinated, for a magistrate of this period, Serpillon, opposed the custom and the law. This was altogether exceptional. It seems as though previous to 1789 madmen did not exist, at least from a legal point of view.‡ They rather argued like the magistrate condemning an avowed madman to death for murder, because, as he said, it was more necessary to hang a fool than a sane man.§ There certainly were commentaries on the ordinance of 1670 which said:—

"He who is raging or mad has no will, and does not know what he does; therefore he ought not to be punished, his madness is punishment enough. If he who commits a crime has lucid intervals, we presume that he was deranged at the time of the act."‖

These commentaries had no practical value. In fact, madness was classed among the acts accounted justificative, that is to say, that its proof was only admitted after the trial. There are even decrees giving the order to judges not to take account of the state of madness, even of avowed insanity, but to judge rigorously. Thus the magistrates themselves were the judges of the state of mind of the accused! They, totally ignorant on the matter, were nevertheless convinced of their own profound understanding! As Corre and Aubry tell us: The furious, the mentally deranged, is mad, he who in a very characteristic and general manner is out of tune with his surroundings.¶ In short the number of those who are recognised as mad among criminals is infinitesimal, and even they do not escape condemnation.

Indeed at the end of the eighteenth century, in France and in

* S. Icard. *La femme pendant la période menstruelle.*

† In the *Dictionnaire Infernal*, by Colin de Plancy, the list of these poor creatures is interminable.

‡ A. Berard. *Archives d'Anthropologie Criminelle*, 1892, p. 166.

§ M. Du Bled. *Revue des Deux Mondes*, 15th January, 1887, p. 625.

‖ Corre. *Les criminels*, p. 334.

¶ *Documents de criminologie rétrospective*, pp. 73, 75.

all Europe, the field of responsibility extended to all human beings, for all, demented or not, are considered as in possession of their own free-will. Insanity is however a cause of the attenuation of penalties incurred for certain crimes. This is a kind of grace. Even the laws of the French Revolution are mute as regards insanity, so vivacious and vigorous in the minds of legislators was the traditional idea that nothing must be done to weaken the principle of moral responsibility.

It required the sensation produced by Pinel's works on mental maladies to move the traditionalism of the jurists ever so little, to tend to counteract their dread of new ideas. The codes seem to be inspired with this new view of human responsibility. The French penal code in article 64, says:—

"There is no crime or fault when the accused was in a state of insanity at the time of the act, or when he has been constrained by a force which he was not able to resist."

The German penal code is more explicit, for to constitute crime it was necessary that the agent should have had liberty of will, at the moment of the act. In Spain, article 31 of the penal code considers as irresponsible the imbecile, the insane, and the unbalanced in mind, whether permanently so or not.

But what is the state of insanity fixed by the code? Jurists and doctors devoted themselves to the search for a criterion. The former sought to hold it within very narrow limits, so as to cover only those individuals who were absolutely insane in all their actions and all their reasoning. The latter, on the contrary, had the tendency to extend this state over a number of people whom the general public and the judges considered in possession of their reason. The contention was sharp and uninterrupted. It continues still. On the one side, the upholders of tradition, of the immutable principle of integral and inviolable moral responsibility, these are the jurists and lawyers. On the other, the doctors, to whom were added later the anthropologians, then the philosophers, and lastly the sociologists maintain on the ground of observation and experience the irresponsibility of a great number, if not of all human beings.

Under the incessant influence of the scientists the jurists have ceded little by little and cede every day a little more of the field

which they have occupied victoriously for so many centuries. Thanks to Esquirol, Leuret, Marc, Calmeil, Parchappe, Moreau (of Tours), Tardieu, Despine, Le Grand du Saulle, etc., the French penal code has since 1810 considerably extended the field of irresponsibility. The idea of insanity has changed with the extention of human knowledge.

"If we go back to the great criminal cases at the commencement of this century (1810 to 1840) we are convinced that magistrates and others then penetrated by the idea of absolute moral responsibility, energetically resisted attempts directed against it, and carefully sought to establish in all circumstances the moral horror of crime and the perversity of the criminal."*

"In all countries the same observation may be made. Everywhere now individuals are held irresponsible, who some twenty, fifty, or more years ago, would have been considered responsible. To arrive at this result how many disputes have there not been! How many idiots and insane have been condemned and even executed! The magistrates of the beginning of the century —as those too of the present day—consider themselves as capable of pronouncing upon madness, as the doctors themselves. In fact, in what does it consist, more than simply to guage the incoherence or derangement of the intellectual faculties, and every man of judgment is quite capable of doing that," says President Fabreguettes.†

Even now the argument used every instant by our magistrates to condemn the deranged is that they know right from wrong; they know how to dissimulate, to frame a plan, and often to defend themselves with much address. To this Brierre de Boismont has replied peremptorily:—

"To make use of such reasoning indicates total ignorance of these afflicted beings. . . . The mentally deranged is a being more generally resembling a reasonable man . . . who thinks, acts, and is influenced like him, but who cannot drive away his delirious conception, his hallucination, even when he wishes to, because his will is paralysed."‡

The magistrates, jurists, lawyers seemed to put their *amour propre* in conserving as many responsible beings as possible, so that they may always be able to condemn. The custom of combining for educational and professional instruction strengthens these efforts at valiant resistance against the opposing efforts of doctors and scientists. And one can understand the illustrious jurisconsult, Troplong, maintaining with an immense expenditure of talent, the error of the indivisibility of human reason, and

* Fabreguettes. *Op. cit.* p. 13.

† *Loc. cit.* p. 16.

‡ *Annales medico-psychologiques*, 1867, t. x. p. 522.

ridiculing the defender of the insane. He compares them to Moliére's doctors, concluding with these very false lines:—

"I think that the medical profession has not made any serious advance upon the traditional doctrines of jurisprudence, and that it ought not to modify them in the least."

In Troplong we may see a specimen of the state of mind peculiar to magistrates, a mental state which provoked the saying to one of them: If the homicidal monomania exists, we must cure it rather than execute the victim; a psychical condition which has been the cause of so many a condemnation and execution of the insane.

In 1866, a superintendent-in-chief declared that in the prison in which he was employed there were at least twelve prisoners in whom madness was presumable. Dr. Gutsch, doctor to the prisons in Baden, stated that he had proved in several of the prisoners an affection of the faculties which obliged the admission that at the moment of their crimes, they were already mentally disordered. In the inquiry of the English commission concerning the death penalty, in 1865, Lord Sidney Godolphin, inspector of the asylum at Denham, acknowledged that punishment of death had been inflicted upon insane. In 1864, the jurisconsult, Fitzroy Kelly, declared that since 1800, 60 insane had been executed in England. Dr. Madden has affirmed that in a few years 11 insane had been condemned to death, of whom 8 were executed.* Dr. Vingtrinier, in 1853, reported that in a total of 4,300 condemned, there were found 262 insane. Dr. Cabadé justly observes on this subject that, at this period, the ideas of moral madness were embryonic, therefore below the truth.† According to Krafft-Ebing, the galleys are filled with moral imbeciles, the victims of judicial errors; Verga is of the same opinion, and assumes that the rarity of moral fools in asylums for the poor is due to the fact that these afflicted ones are in the prisons. One only needs to peruse the reviews, journals, and books devoted to psycho-physiological questions or mental affections to find a considerable number of individuals noted as cerebrally affected, who have suffered one or more condemnations. Dr. Cabadé has justly deduced from this observa-

* Cullere. *Les Frontières de la Folie*, 1888.

† *De la Responsibilité Criminelle*, pp. 28, 29

tion, that there were besides numerous individuals condemned at the Assize Courts (Cours d'Assises) or at the Magisterial Courts (Tribunaux Correctionels) when they were irresponsible, being afflicted with disease of the brain.* The assassin Jobard was insane in the opinion of Tardieu, and he was none the less condemned to hard labour; Verger, the murderer of the Archbishop Sibour, was also insane, and he was executed. A homicidal monomaniac, Henriette Cornier, was condemned for life, notwithstanding the excellent medico-legal consultation with Marc. In 1830 the jury at Calvados condemned to death a young incendiary of fifteen years. She was enceinte and a prey to an evidently religious monomania. Ernest Platner reports that, contrary to the report of the Faculty of Leipzig, a young girl of fourteen years was condemned to death in 1824. At Versailles, in 1827, a woman was condemned to hard labour, notwithstanding that three doctors had declared her irresponsible. Volumes might be written on analogous cases of disease, recognised as such by contemporary science, condemned nevertheless by magistrates, and juries under their influence. It seems as though the magistrature were alarmed at the idea that an individual could escape the condemnation assigned by themselves. Their only anxiety is to condemn and that the accused shall not escape them. To seek to save a victim from them, by affirming and showing his irresponsibility seems to be an offence. They formerly very often neglected to consult medical authority, and indeed, though not so frequently, they do so far too often even at the present day. We only need to open the judicial annals to count by the million, cases where medical intervention was called for, but the judges did not have recourse to it. Numbers of times the medical opinion given is disregarded, and the magistrature condemns as responsible individuals absolutely irresponsible. The French tribunals, as well as the German, the Italian courts, as well as the English, the Belgian, and others disregard the statements and proofs of the scientists.

In the actual condition of our judicial customs numerous mental states are comprised theoretically under the term "insanity," as they appear in article 64 of the French Penal Code. Among other nations the same psychical states are also regarded as the

* *Op. cit.* p. 30.

causes of irresponsibility or of attenuated responsibility. I say *theoretically*, for, in fact, at the time of trial there are many exceptions, and numbers of diseased persons are condemned. Judicial errors are only too frequent. Paralytic cases are often victimised. From 1885 to 1890, 76 individuals were transferred from the Asylum of Saint-Anne (of Paris) alone, whose afflictions ended in death. Sometimes this transfer takes place but a few days after appearance in court. Paralytic cases are absolutely irresponsible, whatever may be the crimes committed, robbery, incendiarism, murder, vagabondage, fighting, public outrage, offences against decency, cheating, etc.

"One cannot insist too much upon the necessity of the protective intervention of the doctor to enlighten judicial authorities upon the irresponsibility of these accused."*

The magistrature frequently does not seek any medical aid, and the unhappy paralytics are condemned, and that also the more certainly, because they avow readily that they are unconscious of any crime or fault. These avowals are taken for cynicism, the defects of memory are treated as pretended, and the sentences are the more severe on account of these maladies.†

The chronically delirious, the "persecuted-persecutors," authors of frequent criminal acts, are also altogether irresponsible. The demonstration of this irresponsibility is not always easy. The medico-legal examination into these cases is often of a most delicate nature. For the chronically delirious it is necessary to show the close relation between the criminal act and a delirium of long duration arising from predominantly sensorial troubles. These sufferers often do not appear to be delirious, even to the people with whom they live. They keep firm command over their reason; they are logical, and plead well for their delirious conceptions. Their deductions, their inductions, the logical, reflected, but the point of departure is false, consisting in hallucinations or illusions.

"With whatever skill the crime may be prepared, and however logically the diseased individual may justify it, in spite of undeniable premeditation, the

* Magnan et Serieux: *La Paralysie générale*, p. 179.

† Magnan et Sérieux. *Loc. cit.* pp. 181, 182, gives a typical case.

chronically delirious," writes Professor Magnan, "cannot in any way be declared responsible."*

In the case of the persecuted-persecutors it is necessary to retrace their history, and to reveal everything in their acts which is the outcome of a disordered brain. These people also retain memory, logic, intellectual activity, but with a certain want of mental balance. They are, like the chronically delirious, recognised as irresponsible by pathologists, even without exception in the profession, but such is the state of mind of the judges, that many of these unfortunates have been condemned, and even executed. The mental disease of these sufferers does not appear sufficiently flagrant in the eyes of the magistrates when informed that there is a guilty person, a responsible being inculpated in every respect before them.

Other causes of irresponsibility, proved by science and—sometimes only—acknowledged by the law courts, are the psychical troubles caused by menstruation. These are made clear in the works of Brierre de Boismont, Raciborski, Vogel, Icard, and how many others. The kleptomania of women in large shops is an undeniably demonstrated fact. The works of Lasegue, Legrand du Saulle, Letulle, Lacassagne, etc., are luminous on the subject. Most frequently these thieves in large shops are not prosecuted, if they are rich. On the contrary, the poor are judicially prosecuted and generally condemned—although irresponsible. In the *Annales Medico-Psychologiques* these facts abound. The possible need of the object stolen is sufficient proof, for the magistrates, of the responsibility of the thief. This is a childish conception, against which the researches of the pathologists protest.

The mania for incendiarism is very common among women at the age of puberty, the most critical of all ages (see the works of Ernest Platner, Osiander, K. Henke, Marc, or Marandon de Montyel). Cases abound where women absolutely irresponsible were condemned for voluntary incendiary, when they had really acted involuntarily and impulsively. In 1835, in Calvados, a young girl of fifteen years was condemned for this crime, without the court even dreaming of seeking enlightenment from medical

* *Leçons cliniques sur les maladies mentales* pp. 350, 351.

science. In 1858, a Sister Rosalie was condemned to five years' hard labour for incendiarism. One might multiply these examples without end. In the same way nympho-maniacs, homicidal mono-maniacs, and how many others—irresponsible beings—have suffered condemnation! In a thesis, Dr. Boyer, in 1880, cited numerous examples: a woman condemned to hard labour for having killed her husband, who annoyed her in her relations with her son; they were two nympho-maniacs. Dr. Icard, in his book on *La Femme Pendant la Periode Menstruelle,* has collected a mass of similar cases. Reading the works of Krafft-Ebing, Moll, Chevalier, Laupts, Sérieux, Raffalovich, etc., we find that perversions and sexual inversions, which have often led to condemnations, were absolutely impulsive, irresistible. We have known a man still young, in high life, whose sexual appetite is such that the ugliest, dirtiest, and oldest prostitutes are not in the least repugnant to him. Married to a rather pretty wife, whom otherwise he does not abandon, he will leave a ball, soirée, or meeting, and rush away to copulate with the first prostitute in any part of the Champ Elysées or the fortifications, and then will return light-hearted, satisfied, as if he had acted in the most ordinary manner in the world. He knows that he could be arrested, that he outrages decency, and that he is condemnable; he knows that he defiles himself, but he cannot resist doing it. This man is otherwise, like ordinary men, of a rather brilliant intelligence, and in appearance nothing betrays this sad defect. The irresistibility of the act is such that no reasoning with which he appeals to himself could stop its execution.

The impulsive character, beset with erotic manifestations, appears in a number of people, classed as degenerate. Nymphomania, satyriasis in degrees of greater or less development, are not rare. Indecent exposures often entail condemnations, as do all the series of sexual perversions. The agents have always perfect consciousness of their state, while there is an irresistible desire to satisfy the unhealthy appetite, cost what it may.

Every day we come in contact, in life, with people who are really diseased, who come, go, occupy themselves with their business often better than the greater number of the people said to be reasonable, but who nevertheless are absolutely irresponsible for

their acts. There are insane, indeed a great number of insane, who live apparently like all the world. They are capable of occupying public situations, and they perform every day, and at every moment, very complex intellectual operations, but they are really irresponsible (Cabadé).

With all degenerates, there are troubles of will. In all of them there appear obsessions, impulsions, constituting that which one otherwise calls monomania; dipsomania; the homicidal mania, when there is exaggeration of the impulse; incapacity to will (aboulie), when the motive tendencies are too weak to provoke the execution of the act. The dipsomaniac, the homicidal maniac are conscious of their obsession, but they are incapable of resisting it. Magnan, P. Garnier, Ladame, Benedikt, etc., have many and many a time demonstrated these facts. There exist irresponsible people, and many of them are in the prisons, according to these pathologists. The most diverse causes may bring to light the besetting idea, the irresistible impulse in these degenerates, who otherwise are generally, for the ordinary observer, like everyone else. Dr. Marc has observed that crimes against the person are most frequent at the age of puberty. Other physiological conditions (pregnancy, puerperal fever, cessation of menstruation, infectious diseases), the influence of the seasons, of alimentation, economic conditions, etc., may determine delirium, obsession, irresistible impulsions. The obsession and personal interest may go together. Besides, the conscious, avowed motive is not always the true, unconscious motive. It can happen that some among these impulsive individuals may account for and justify their foolish actions by excellent reasons, which could make one believe in their non-impulsive nature—but this is contrary to fact.

"To-day, the most precise scientific evidence has remarkably enlarged the domain of epilepsy; certain pathological states, such as vertigo, trance, certain intellectual obscurations may be justly considered as forming part of epileptic disease, while there is general agreement in considering all epileptics as absolutely exonerated from responsibility. I know well that from time to time we still find certain recalcitrant judges who condemn epileptics; but the number of contrary decisions is of great importance. It is a fact that with an epileptic a convulsive fit can be, and often is, followed by a sharp attack of mania, under the influence of which the sufferer will, with complete consciousness, kill the first being that comes within his reach, and then will relate his crime with as much indifference as if he were speaking of an act

committed in China. Epileptic convulsions are to some degree replaced by psychic convulsions, above all remarkable for the violence of the impulses, the extreme feebleness of all inhibitory power, and the absolute loss of all memory. These profound disorders of the intellect can suddenly befall any epileptic, and make him commit the most criminal acts, and that sometimes quite independently of any direct and immediate action of the fit. It is then absolutely certain that epileptics are altogether irresponsible, and that because the epileptic disease, arising from a brain in the interior of which we find certain anatomic defects of more or less gravity, or defects not accessible to our present means of verification, constitutes or produces psychological ensemble, if not perpetually defective, at least capable, at any minute, of being profoundly disturbed."*

When an idea is implanted in the brain it predominates, subjecting all the other functions of the organ, turning them towards one single end—the realisation of this violent over-powering idea; thus crimes can easily be produced. No other idea arises or developes in the brain of the agent to prevent the action. Numerous crimes are committed in this manner by persons under the dominion of one idea, without its being in their power to desist. These subjects are really irresponsible. Juries understand this very well when they acquit criminals for being under the influence of passion. There has been transient disorder under the influence of moral emotion. Then certain individuals lose the exact conception of things, and the relations which bind them; they act irresistibly. Sometimes the visual, tactile, and motor functions are momentarily destroyed. The intense emotion violently over-excites the cardiac muscle. It thus produces a hyperaemia of the meningia and the encephalic centres, which destroys mental vision, diminishes the regulating power of judgment, and leaves free play to unregulated feeling. This constitutes, as Dr. Corre remarks, a transiently pathological condition, which more or less weakens responsibility, if it does not altogether destroy it. This irresponsibility of the will, together with a certain degree of motion, shocks the magistrates exceedingly. They cannot understand the impossibility for these subjects to restrain their passionate impulses.

"The temptation of these passions," writes President Fabreguettes,† "cannot be sufficiently repressed. The moral faculties continue indeed to exist, only the exercise of them is wanting or perverted, owing to causes against which

* Cabadé. *Loc. cit.* pp. 53, 55

† *Loc. cit.*, pp 14 15

everyone has the possibility—and therefore the duty—to struggle (?). By a singular sophism, they say that the violence of the passion, or its intensity, creates the right, in some manner, to its satisfaction, and makes the criminal beside himself. On the contrary, it is the individual himself in his worst instincts who abandons himself to the force of his passions (!)."

Hear again the lawyer Rossi:—

"The passion is in some way desired by him who lets it take possession, little by little, of his soul (?). The last degree of the passion which produces the irritation, which in its turn engenders criminal action, this last degree is desired like the others: it is, like the others, the result of freely accorded action to the object which acts upon and inflames the imagination."

It is time to repeat here, with our full endorsement, the words of Cabadé:—

"Without doubt it is very beautiful, and even very useful to say and proclaim aloud that it is necessary to moderate one's passions, to restrain and check them; but this is easy to say and to do for those who possess a well-balanced brain, free from all physiological defects, whether hereditary or acquired. These great preachers always make me think of the sergeant who found fault with a hunchback, telling him it was very easy to hold oneself upright. Alas! it is no more easy to maintain rectitude of conduct and action with a brain impaired in its anatomic or functional integrity, than it is for a vertebral column, the direction of which is defective, to hold itself upright."*

In spite of the advice of the magistrate, and except for occasional instances, due to a multiplicity of causes, these criminals are generally acquitted because the ordinary individual justly recognises in them beings in whom reasoning faculty has been momentarily suspended.

In many crimes we note an excessive futility of the motives. They are ridiculous, improbable. One kills his companion because he snores. Another pitilessly massacres and buries two children because they splattered a little mud on his coat. A girl becomes the accomplice of assassins to get some fine bonnets. A man in easy circumstances kills his daughter who is growing up; she occasions him an increase of expenditure, which seems to him an obstacle to his satisfaction in first fruits and fine linen. A young nurse poisons two children so that she may go out to see a doctor and a chemist. How many analogous cases might we not mention, taken from the writings of Corre, Lombroso, etc., or from the judicial reports! The absurdity, the folly of the

* *Loc. cit.* p. 179.

motive leading to the crime is striking to everyone in such cases. Here is a proof of want of balance, of irresponsibility which is not yet admitted by all, but which nevertheless tends to be so more and more. Numbers of these unbalanced, veritably mentally-diseased natures are in the galleys, in prisons, or have been executed.

Alcoholism or inebriety, acting upon certain pre-disposed constitutions, brings about incapacity to will (aboulie). No prohibitive idea arises in the brain of these unfortunate men to prevent a criminal act, and so it is committed. They are really irresponsible, but most frequently they are condemned, particularly if the cerebral troubles manifest themselves only under the form of criminal acts. Those addicted to haschisch and chronic alcoholists are considered irresponsible by the greater number of mental pathologists. The same is the case with the chronic absinthists. But alcoholists, absinthists, and acute haschischists are regarded as responsible. At best in certain cases the crime is extenuated. Dr. Hazeman,* who has specially studied absinthism, protests against this attitude of mind on the subject. His opinion is that all these cases are irresponsible, for in all of them criminal acts are committed under the influence of irresistible impulses or terrifying hallucinations. The magistrates and the ordinary public are opposed to regarding alcoholism and absinthism as causes of irresponsibility. Even military codes indicate that inebriety cannot be an extenuating circumstance of crimes and offences.

Doctors of mental diseases and criminological scientists recognise a complete series of doubtful criminals, men on the frontier of insanity. Their responsibility is uncertain; they are not fools, but they approach insanity under some form of degeneration. A great number of persons subject to giddiness, epileptics, hysterical subjects, are allied to those criminals who cannot be held responsible. The organism of these individuals is proved to be diseased; the act is elaborated by a diseased organism; consequently it cannot be sane or normal. Its elaboration has been abnormal.

Let us say with Corre:—

"What becomes of responsibility when one knows that consciousness, even

* *Les homicides commis par les absinthiques.*

the apparently perfect understanding of criminal acts cannot suffice to prove responsibility the moment that one meets with it in veritable monomaniacs."*

Reasoned and studied premeditation of a crime is not a proof in a delinquent of normal, average reason, without any sort of cerebral defect. It is often very difficult to distinguish whether such and such a criminal is not on the frontier of insanity; an invalid more or less profoundly affected. Most frequently, the diagnosis is made—after the execution of the criminal. Thus the assassins Lemaire, Menesclou, Leger, Benoist had cerebral injuries sufficiently serious to be recorded at the post-mortem examination.†

Professor Bouchard has shown that maladies caused by gradual diminution of nutrition provoke abnormal action of brain. From this results the fact that intellectual and moral life suffers from want of nourishment. Psychosis and nervous disease can be produced by diabetes, gout, gravel, rheumatism, etc. These are real causes of irresponsibility, as are even intellectual and physical fatigue when they weaken resistance to passion, and render prohibition impossible.

Other causes of irresponsibility are found in somnambulism, whether natural or provoked, suggestion, or auto-suggestion. According to Bernheim‡ suggestion plays a part in many crimes. This professor is of the opinion that Gabrielle Fenayrou and Gabrielle Bompard acted under the influence of suggestion. False testimony may be given in good faith, created by the suggestion of the judge or by auto-suggestion. In the case of Borras, there was a proof of this.

Auto-suggestion can be provoked by dreams. Dr. Corre has proved that a dream can make such an impression on an individual that after waking "the vibration of the dream remains sufficiently intense to dominate over the real centres of perception, or by hallucination to deceive the appreciation of external things." In this state an individual can commit crimes of which he is really irresponsible. Corre surmises that these states, which somewhat

* Corre. *Les Criminels*, p. 343 ("Que devient la responsabilite lors qu'on sait que la conscience, la notion même parfaite en apparence des actes criminels ne saurait suffire à établir cette responsabilité du moment qu'on la rencontre chez de vrais monomanes.")

† Dr. G. Lebon in the *Revue Philosophique*, May, 1887.

‡ *Hypnotisme, suggestion et Psychothérapie*, p. 146, *et passim*.

resemble morbid delirium, are the result of intoxication from the lack of assimilation in even the most common-place circumstances (defective digestion, retention of urine, etc.)

Some authorities, like Benedickt,* have denied that crimes can be committed by suggestion, but others, like A. Voisin, Berillon, Liebeault, Liegeois, Bernheim, etc., are of the contrary opinion. It is impossible to have experimental truth that the latter are in the right, but it seems reasonable that they may well be so. According to Voisin, Berillon, etc., the penal responsibility of an individual who has committed a crime under the influence of hypnotic suggestion is zero.† The courts of judicature rarely admit this doctrine. Dr. Mesnet tells us the history of a somnambulist who was condemned for theft; and Dr. Bernheim speaks of an advocate "in the second state," for he possessed a double personality. In the "first" or normal state, he had forgotten, or was unconscious of everything (of offence and condemnation). Nevertheless they are beginning in France to examine the accused who plead somnambulism, stating that they have no recollection whatever of the acts imputed to them. Dr. P. Garnier relates the case of two hysterical individuals arrested for theft in a state of spontaneous somnambulism. To all the accusations they gave formal contradiction. They were completely unconscious of the offences, which unconsciousness (amnésie) was proved sincere by the medical examination.‡

Everybody is not an indivisible unity. This indivisibility of the individual is a conception which tradition maintains in us; it is contrary to all the discoveries of psycho-physiology. It is powerfully preserved, despite its falseness, thanks to our habits of language, to the fictions of law, and the illusions of introspection. In the same individuality there can be, there often is, a plurality of personalities, that is to say, a plurality of memories, of wills, of consciences; each is ignorant of that which comes to pass in the others.§ As there are several personalities in the same

* In Austria the questions of hypnotism, suggestion, etc., have been as yet little studied, which may explain the opinion of this scientist.

† *Archives d'Anthropologie Criminelle*, p. 544, September 1892.

‡ *Médecine Moderne*, 1896, No. 98.

§ It would be instructive to read, on this subject, the works of Ribot, Richet, Bourru, Ajam, and especially Binet, "*Les Altérations de la personnalité*."

individual, it follows that the individual cannot be responsible for the delinquency committed in his "second" self of which his primal self has no consciousness. These phenomena may be produced naturally, but they may also be provoked by suggestion.

VI.

Criminal Responsibility *(continued)*.

We have seen that, under the persistent efforts of scientists, the field of irresponsibility has been considerably extended. This tendency goes on increasing. We can see the time coming when it will have become common to maintain the irresponsibility of all human beings; we can predict the time when this idea will be accepted almost unanimously by all civilised individuals. Then responsibility will be defended only by such backward characters, ardent supporters of the vestiges of the past. While awaiting this time, scientists, particularly alienists, strive more and more to restrain the limits of responsibility, to extend the action of physicians.

Dr. Paul Garnier, at the Congress of Criminal Anthropology, held at Brussels (1892), took the opportunity to recommend a medical examination—even if only a summary one—of all accused.

"It will be useful so to prove—as science has established—that many fools are conscious of their state, of their delirium, and of their relations with the exterior world; that several of them, remarkable for the exact association of their ideas, hold intelligent discourse, defend their opinions with skill and with the strictest logic; that others, wishing to attain an end, combine their means with cunning, dissimulation, and calculation. There are some whose affective faculties are only perverted, or whose actions alone are unreasonable; others show other intellectual defects like those of the will (impulsive appreciation) which urge them irresistibly to guilty acts. Many, although very dangerous, maintain for a long period a calm and a physical appearance of reasonableness, likely to deceive the most experienced people. . . . It is, as Leuret explains, as though madness existed less in the aberration of all the faculties of the understanding, than in the lesion of only one of the faculties on one or two points . . . and that, separately or all together, it can be disturbed without deranging the intelligence." (Aubanel.)

The immense majority of individuals, and among them the jurists, almost unanimously believe that only maniacs and raving madmen are irresponsible. This error has filled prisons and convict stations with unfortunate invalids. Even now Corre correctly states that there are in these places "veritable madmen,

misunderstood only by science, generally snatched from its protection by the opposition of old meta-physical doctrines which still prevail among our jurists."

How many instinctive or reasoning monomaniacs have been thrown into prison or sent to the scaffold, in spite of the protestations of the alienists! The judicial statistics are full of them, without counting those in whose case a physician has not been consulted or has been mistaken. Even some alienists, like Casper and Ott, have maintained that monomaniacs were responsible for acts committed under the influence of their fixed ideas. One lawyer, M. Molinier, actually wrote, in 1854, on the subject of monomania:—

"In principle, every individual, who has discerningly committed an illicit act and is incriminated by law, ought to be punished. In fact, partial madness cannot exclude discernment for acts in regard to which there has never been any delirium."

It is this theory which has led many an insane criminal to prison or to death.

Take, for instance, the sergeant Bertrand, condemned by the council of war for desecrating corpses. Contrary to the conclusion of Dr. Marchal (de Calvi) the council held that he had acted "with the full and entire liberty of all his intellectual faculties." The murderer, Moulinard, condemned to deportation under the pretext "that having always spoken, acted, and reasoned like ordinary men, he could not have committed his crime under the influence of madness." The doctors declared him a reasoning monomaniac. In 1868 the council of war, sitting at Antwerp, condemned a soldier, M. Fléron, to perpetual imprisonment for premeditated assassination of a captain. The expert alienist had concluded that he was insane (possessed with a delirious idea). In 1872, the condemned was officially recognised as mad, and transfered to an asylum, where he still was last year. Amongst a multitude of other similar cases, we will mention that, in 1887, of Dr. Lamotte condemned for indecency, "because he ought to have been responsible for his acts at the moment of these misdemeanours." And notwithstanding he was known to be epileptic, and so considered by the doctors. In truth, the time is not far past when magistrates regarded epilepsy as, at the most, only an extenuating

circumstance. They thought that convulsive maladies could not be a sufficient cause to prevent moral liberty. Only quite recently again, in 1896, an alienist, Dr. N. Parant, did not hesitate to write:—

"In principle, epilepsy can cause accidents which take away from an individual his free-will (?), but it may also leave him entirely sane in mind."*

For this doctor and jurist, except in the crises, the intelligence acts in an epileptic just as in those free from all nervous maladies. He is responsible for every crime committed when not under the influence of a convulsive or impulsive crisis. In 1896, M. Parant does not even say, as do the commentators of 1670, that it is necessary to presume derangement of mind at the moment of action in an epileptic! Hence the legal doctors are often the firm supporters of the magistrature. Social teleology makes them forget the scientific aim that they ought alone to pursue. We have seen in the preceding lecture that epileptics were considered by alienists as always irresponsible. The legal doctors, more magistrates than scientists, are opposed to this view. One of them, M. Vallon, expresses himself thus:—

"Such a doctrine (that of irresponsibility) is doubtlessly very convenient for the medical expert; *but we see at once how dangerous it would be for society to put it into practice.* To extend the sphere of morbid irresponsibility to the point of declaring all epileptics irresponsible for all their acts, would be to give unfortunately to a large category of individuals the right to commit all crimes and offences without ever having to account for them to justice. Such an opinion is not admissible; for my part, I shall oppose it with all my might. Once entered into the path of the absolute irresponsibility of the epileptic, and there would be no ground to stop there; after epilepsy it would be hysteria that would confer immunity before the law; then would come the turn for neurasthenia; one could go on thus as far as sick headache. It would be necessary, in fact, that epileptics were always unconscious of what they did—sometimes they act with reflection and with complete knowledge of the matter involved."†

We see very clearly in these lines that responsibility is confounded with consciousness. This confusion is frequent, and is the origin of numerous errors. We see not less clearly how his pre-occupation with social aims has led the expert into considerations extra-scientific, and make him forget the permanent objective aim of his examinations. Quite recently again the council

* *Op. cit.* p. 159.

† *Annales d'hygiene publique et de médicine legale*, May, 1893.

of war at Brussels condemned an epileptic to death. The military court merely transmuted this penalty into 15 years of hard labour, although the report of the legal doctor decided it was a case of irresponsibility. The decision of Dr. Boulangier was confirmed by the Drs. von Gehuchten, Geoffroy, Raymond, and Brouardel. Now the soldier, De Ruyter, is in the convict station, and is a veritable invalid, a murderer by irresistible impulsion.* Maudsley tells the history of a lawyer's clerk, who impulsively killed and cut a child in pieces. He kept a journal of his doings, and wrote on the day of the crime: "Killed a little girl, it was good and warm." This fool was hanged. Louval, Guiteau, political assassins, were impulsive subjects, just as Papatoine was. Dr. Cabadé cites the case of an impulsive, unfortunate, often condemned for theft; he could not help stealing, although he was conscious of the act, and of its moral import. This invalid died in prison trying to save a fellow prisoner.

Maudsley points out the existence of a criminal psychosis, simply a variety of nervous disease. Virchow defines criminals as deranged in formation. It is impossible to indicate where the deranged subject is divided from the criminal, to show where in crime derangement ceases. Dr. Dubuisson, to his great regret, acknowledges this impossibility. Considering a criminal and a madman as authors of criminal acts he states that he does not know why one should be punished and the other not, both being criminals. This absence of a criterion distinguishing criminal and madman, acknowledged by all as such, leads the alienist logically to affirm the irresponsibility of the delinquent. More lawyer than scientist, M. Dubuisson is shocked at this logical consequence. Thus he writes:—

"The doctor is perfectly free to carry his investigations as far as he wishes, and to call every anomaly, which interests him on any ground, malady or infirmity; but the magistrate cannot indefinitely follow the doctor in this way, without the day coming when it will suit the physician to see in the criminal a weak or sick subject, and that is already done by many minds. The magistrate judging the criminal will have to resign his functions, and to demand, as did M. Accolas (a lawyer) fifteen years ago, that prisons should be replaced by hospitals."†

This day will inevitably arrive, but while awaiting it the magis-

* *Journal des Tribunaux de Bruxelles*, 1896.

† *Archives d'Anthropologie Criminelle*, p. 123. March, 1892.

trates do not follow the medical men. Barely even do they follow those who strive to reconcile science and tradition. With an energy worthy of a better cause the tribunals and criminal courts resist the progress of science, the new discoveries of medical men, psychologians, and anthropologists. The *rôle* which medical men strive to play in criminal questions offends, shocks, and wounds the lawyers. It seems as though the physicians wanted to steal away the prey to which they have an indisputable right. Many magistrates consider that the present share of physicians is too great. All of them believe that the claims of medical men pass all due limits. In the anthropological congresses alienists and anthropologists continually demand—with the approval of all scientists—that a greater share in the judgment of criminals be granted to medical experts. We have seen that M. P. Garnier was of this opinion, in 1892, at Brussels. At the Congress of Paris, in 1889, MM. Pugliese and Sarraute had already supported this view. One of them even wished that the last analysis of the cases should be submitted to the physicians, and that the judges should be subject to their opinion. Dr. Semal proposed a psycho-moral examination of the delinquent, to authorise the deliberation or defer the penalty. The doctors would then be consulted before, during, and after the verdict! M. Fabreguettes is quite distressed about it. He laments. He cannot allow that so much audacity should be unanimously approved, alas, by the scientists of the whole world. Listen to his tearful stupefaction:—

"There is logic in all things. MM. Pugliese and Sarraute have demanded, with the unanimous agreement of their colleagues, that in all the schools of law there should be instruction in legal medicine. They go so far as to require for students a veritable clinic for criminals. M. Herbette, the director general of our penitentiary establishments, made no objection to the principle, and only formulated reservations in detail. All were agreed that magistrates ought to receive technical instruction concerning criminals, their social surroundings, etc. The task of the local judges would become singularly delicate. To the qualities of penetration and analysis which are so indispensable to them they must add a good medico-legal knowledge, and all this in order frequently to efface themselves before the medico-legal specialist."

The first president, Fabreguettes, is saddened at this invasion of science! What use to learn more? The magistrates know nothing of psychology, of intuition, even of physiology. With

pleasure he therefore applauds the English criminal courts. In their opinion judge and jury do not need the help of anyone to fathom the state of mind of the accused. They judge the acts of the deranged man as they do those of the sane when placed in the same conditions as surrounded the sick man, with regard to the latter's delirious conceptions. An individual subject to hallucination imagines he receives an injury and replies by boxing the ear or striking someone. He is acquitted because a sane man would have acted thus for a like injury. But if the individual acting under hallucination kills because of the imaginary injury, he is then considered responsible, the gravity of the retalliation not being in any relation to the supposed injury. In reality there seem to be no insane persons for the lawyers except those who are presumed to act without motive, or from a motive that would not enter into the mind of a sane man. In Great Britain the courts still to this day "justly believe," according to M. Fabreguettes, "that the judge of culpability ought to keep with extreme reserve from opening the door to impunity from crime, under pretext of morbid obsession or obstruction to freedom, in cases where there were only vicious desires and perverse passions."* Thanks to the *habeas corpus* and the entire publicity of the trial, British justice is a little less bad than that of other countries. Consequently the efforts to reform it are less than on the Continent. All progress realised is opposed to later progress. In the British Isles, therefore, justice tends less to change than in all other European countries. It will be so until a fast approaching day when public opinion aroused by the scientists will oblige the British judges to take account of scientific discoveries.

The state of mind of the lawyers beyond the Channel is that generally prevailing among jurists. At the last Congress of Criminal Anthropology it was revealed in all its splendour in the words of the Russian Senator, Ignac Zakrewsky:—

"The magistrate will not abdicate his secular powers to anyone whatever, whether it be a medical commission or an assembly of sociologists."

It is easy to understand that a servant of the Russian autocracy could with difficulty speak otherwise. In Russia, the laws and judicial customs correspond with those of western Europe in the

* *Op. cit.* p. 28.

eighteenth century. There, therefore, are to be found the most ardent defenders of the dogmas of the law, impregnated with the superannuated meta-physics of past centuries. Like our ancestors, the Aryans, they consider that "of all rules the strictest is that which is admitted as being the law ought not to be changed."* The law ought to be immutable. Consequently M. Zakrewsky, a lawyer and Russian official, necessarily upholds the Russian laws. He cannot therefore allow science to force breaches in them by letting medical commissions judge of the psychic condition of the inculpated. In Russia, secondary education is such that young people, of both sexes, are taught that in 1794 the whole of France went suddenly mad to adore the Supreme Being. Therefore it is natural that in this country the schools of law and the courts are closed to every effort to enlighten them. There more than elsewhere the aim of the tribunals and courts is the condemnation of the greatest possible number of people, culprits or not, responsible or not responsible for misdemeanours. The slight development of governmental surroundings in this country adds its influence to that of the legal profession. It comes to its support. That is natural and rational. We must be so much the less astonished at it, when in our countries of more ancient civilisation, the same state of mind is seen with almost the same intensity. An ex-magistrate, now a deputy, M. Alexandre Berard, has still retained the vulgar conception of madness. He admits as irresponsible only those beings absolutely incapable of discerning good and evil, incapable of comprehending that in committing such or such acts they commit a crime. At the most, this legislator makes some concessions authorising indulgence towards those whose responsibility is limited by illness or feebleness of spirit. Other lawyers, like Carrara, Pessina, Chauveau, Helie, Brusa, etc., have judicially established the rule of irresponsibility: If a monomaniac commits an act in relation with his partial delirium he is irresponsible; if the act is not connected with it, he is responsible.

"This opinion," says one of them, Brusa, "may not be pleasing to physicians, but nevertheless it is until now the one most conformable to public sentiment."

Certainly this opinion does not please medical men. Nor does it

* E. Nys. *L'Inde Aryenne. Revue de Droit International*, t. xxix, 1897.

any more satisfy all unprejudiced thinkers, for the simple reason that it is an absurdity. This point of view was nevertheless for long, and still sometimes is, the criterion of judgment in the English courts. In Great Britain and in North America there are no fixed rules regarding the irresponsibility of the mentally afflicted. In a general way one can say that the sign of responsibility admitted by the judges is the knowledge on the part of the accused of the nature and the qualification of the act committed. It is necessary that he should have discernment of good and evil, or know that an act is contrary to law, to be responsible. But many mentally unsound subjects have this knowledge, and are consequently held responsible. Sometimes, in practice, in North America, irresponsibility is extended to more states of aberration than those admitted as causing irresponsibility in Great Britain.

The irresponsibility of the mad or partially mad of any nature whatever is recognised, admitted, and maintained by the great majority of alienists and of psychologists. It nevertheless happens, and very frequently too, as we have seen, that these diseased and psychologically infirm people are condemned. With all their might lawyers oppose the intrusion into their midst of scientific ideas. In fact, all established bodies tend to preserve their *status quo*, and resist all efforts at modification. But scientific criminologists need not trouble themselves about the obstacles which the conservative tribunals vainly raise with their weak hands against the victorious march of science. Their efforts make one even smile disdainfully, did not hosts of poor beings pay with their lives and their liberties for the professional stubbornness of lawyers. And we should regret the loss of time in the scientific congresses where these anti-scientific ideas are put forth, if the easy refutations of the scientists were not of slight utility—the only one resulting from reaction against ideas from past centuries still surviving in the brains of the backward.

The opposing efforts manifested on the one hand by the legal profession and its adherents, by the alienists, psychologists, anthropologists, and sociologists on the other, gave rise to a *modus vivendi*. It tends to satisfy everyone, and in reality satisfies none. It is, in fact, opposed to reason supported by science, at the same time that it contradicts the meta-physical principles of the defen-

ders of free will and the courts. This compromise is the work especially of legalist-physicians, who are at the same time medical-scientists, as well as lawyers and experts. They have tried to reconcile science and tradition, conceiving the idea of partial and extenuated responsibilities.

With Descartes, the classical legal authors considered responsibility as something absolute, not tolerating degrees. Free-will is "entirely present or entirely absent." Then responsibility is entire or it does not exist at all. Pascal and Bossuet were of this opinion. They believed in eternal recompense and eternal punishment. This idea is no longer held by a number of the believers in free-will. They are obliged, whatever the consequences, to take note of scientific progress. So, like the Abbé de Baets, they declare that man in responsible for his acts in so far as they depend upon his free-will. The latter is limited, therefore his responsibility is limited. Men are consequently very variously responsible, according to the quantity of free-will of which they dispose. The degenerate, many madmen, are partly responsible in the opinion of a certain number of alienists. MM. Legrand du Saulle, Lasègue, Tardieu, Ball, Belloc, Motet, Dubuisson, etc., are of this opinion. It is to be noticed that the majority of the alienists are of the contrary opinion, and that the only defenders of this partial responsibility are the medico-legal men.*

The new Italian code (1890) has consecrated this theory, admitting it in its articles 47, 48, 51. Thus, according to article 51, there is attenuation of culpability in favour of him "who has committed the act under the impulsion of anger or intense grief." Denmark and Greece admit demi-responsibility. This view is spreading. Dr. Thierry and M. Tarde hold it, because they consider it conformable to common sense.

Thus expert doctors conclude very often in favour of partial responsibility, others for extenuated responsibility. Dr. H. Contagne as well as M. Tarde† see no difference between these two forms of responsibility. There is one nevertheless.

* Dr. Coutagne congratulates himself that the theory of attenuated responsibility, regarded with an evil eye by alienists confined to clinical studies, every day asserts its practical value in the domain of judiciary practice, where one may say it has definitely taken its place." *Manuel des expertises medicales en matière criminelle.* Lyon, 1887.)

† *Philosophie Pénale*, p. 184.

What is meant by partial responsibility? It is that the individual has certain abnormal cerebral departments, and others normal; the standard is determined by the average; he is responsible for the acts emanating from the normal departments, and irresponsible for the others. Thus an individual B. has a delirious idea; for all the rest of his mentality he is like other men. B. is partly responsible. The acts committed under the influence of his delirium are not imputable to him, while the others are. B. has a just notion of all that does not arise from his delirium. He ought then to be held responsible for that. This is partial responsibility. This Ball, Blanche, and Motet considered to be the condition of Euphrasie Mercier in the famous crime of Villemomble.

In the case of Euphrasie so say, in substance, the experts' reports, we find on the one hand the type of complete intelligence at the beck of crime; on the other hand, the clearest indication of mental alienation. On the one side there was mysticism, on the other, a sense of order, reasonableness, besides commercial aptitudes. We understand now what this expression signifies:—partial responsibility.

Attenuated responsibility differs from it in this: There are beings, who, living in certain surroundings, have ideas of things different from those of the average man in these same surroundings. They have inexact appreciations of the relations between things. That which the average individual would find good, would not be good for them. They are feeble intellectually and morally, or feeble morally alone. However their feebleness of mind is not such as to jar greatly upon their environment. It does not reach such a degree that everyone is aware of the aberration with which they are afflicted. It is only a moral or intellectual weakness. Or rather, it is an inexact idea of things and their relations, due to a deficient or false education. Or again it is an incapacity (either congenital or acquired, permanent or passing) to seize the exact and intimate relations of things.

For these individuals afflicted with intellectual or moral debility there is attenuation of responsibility. This is not complete, either in the whole or in part; but it is weakened or diminished. The child has attenuated responsibility. So had Gabrielle Bompard,

the accomplice of Eyraud. Upon her case the experts Brouardel, Motet, and Ballet express themselves thus:—

"This is an abnormal nature but not intellectually weak. Her morality is incomplete, but incomplete like that of the Parisian gamins (gavroches), who at eighteen or twenty years of age, committed the most serious crimes, who have not like others a sense of good and evil, but who know very well the consequences of their acts, from a legal point of view. There is in this case an arrest of the moral sense, without parallel arrest of the intellect."*

We understand now the difference between partial responsibility and attenuated responsibility. This difference exists, as we have shown. Nevertheless it is very slight. In practice the terms are very often employed indifferently. Usage has made them synonymous. Thus M. Corre does not admit the responsibility of madmen, but he admits that of criminals: in whom another malady distinct from alienation has transformed the character, diminished the energy and the solidity of cerebral activity.† The temperament and education‡ are causes of attenuation.

"Indulgence," says he, "should be in inverse proportion to the degree of education that the environment affords to the delinquent."

We see at once here that Corre synonymises partial and attenuated responsibility. They are so slightly differentiated that this confusion is easily understood. We shall ourselves use them thus for convenience of language.

When an expert declares that an accused is partially responsible, he says that the individual is either partially abnormal, having the brain partly diseased, affected, or that the individual, by the conditions of his education and temperament, or from an illness has had his cerebral activity diminished in energy and in solidarity. In fact, this second alternative seldom presents itself in the courts. Otherwise in the two alternatives, the question is of abnormal action of the thinking apparatus. Mental activity is different from that of the average human being. This is what the medico-legal specialist says when he affirms the partial responsibility of any accused individual. There is more or less serious cerebral derangement always localised, either functional

* *Gazette des Tribunaux*, 19 x bre 1890.

† *Crime et Suicide*, p. 128.

‡ L'Abbé de Baets has noted that among young delinquents, many were sons of widows. The father being dead, the mother is in the workshop earning a living, and the child in the street.

or organic. Partial responsibility differs little indeed from alienation. Has not Mr. Ball said:—

"The insane—and they are many—who have often retained a considerable portion of their intellectual power, are incontestably governed, in a certain measure, by the same sentiments, instincts, and motives as other men, and this is why in some particular cases it is right to apply in their cases the same principles of common law."

The theory of partial responsibility rests upon the idea that in monomaniacs a delirious idea is implanted like a parasite upon the brain. The intelligence remains healthy in all other respects.

The partisans of the theory of partial responsibility implicitly admit more or less clearly that the individual has his cerebral machinery divided into at least two parts, the one healthy, the other diseased. Upon what do they base this division? They do not say. But it may be ascertained by reading their reports. When acts are conscious, the result of reflection, and deliberately considered, succeeding one another logically, with an aim previously determined by the subject; when this aim does not clash with the environment, and conforms to the average, then medico-legal specialists conclude that these acts emanate from the sound part of the brain. Thus the criminal acts of Euphrasie Mercier were attributed to a normal mind, for she possessed love of order and commercial aptitudes. Her acts of religious mysticism were, on the contrary, considered products of the diseased parts of her brain. No clinical fact, no observation or experiment justifies this division of acts, by which these insane ones are produced by the diseased parts of the encephalus, those criminal ones are products of the sane parts. It is too simple a division of mind. Sustained attention will show how illogical this baseless hypothesis is. It produces the surprising result, that in the case of Euphrasie Mercier criminal acts are designated as the consequence of "good sense." This false hypothesis proceeds from the idea, still held by alienists, though often unknown to themselves, that an individual is not altogether mad, if he has some true conceptions as well as the unequivocal symptoms of insanity. They forget that there are many insane who act with premeditation, planning their acts with care. Often they are moved by ordinary motives of interest, jealousy, hatred, or vengeance. And nevertheless they are led in spite of themselves to commit violent, although reasoned,

acts, by virtue of their pathological state, and they ought consequently to be regarded as irresponsible. (J. Falret.)

The medico-legal specialists are penetrated with the idea of responsibility, even when they do not presume, according to the council of commentators to the Ordinance of 1670, that the insane delinquent who has lucid intervals, has acted criminally during the time that his mind was deranged. The advocate, General Servais, in his commentaries on the Belgian Penal Code, judges that the lucid intervals of the demented do not at all prevent their irresponsibility!

It is quite childish to pretend to divide an individual in several portions, having no influence upon each other. And according to this hypothesis of mental division it is necessary that this must be so. Otherwise the influence of the diseased portion on the healthy portion must render the functioning of the latter abnormal. As a criterion of the origin of actions it is childish to take the degree of discordance of the end pursued with the environment, and the logical sequence which leads to the acts. In fact, we know, in spite of prejudices to the contrary, there is, as Maudsley has said, a certain disorder of the mind without delirium, without illusions, or hallucinations. The symptoms consist, above all, in a perversion of the mental faculties, called emotional and moral.

It is impossible to prove that a delirious idea, anchored in the brain, does not react upon every cerebral function, is not a factor in all its products. Rationally it is the reverse which is true. When, on certain points, there are abnormal cerebral manifestations, reason would indicate that the diseased portion of the brain affects all the individual psychic manifestations, even when these manifestations seem common and normal. It does not seem doubtful that the mental machinery being active, that is, in movement, all parts would react upon one another. Who could prove then that a certain act was criminal, although logically deliberated and carried out? Has not the product of the brain sprung from a delirious idea developed in other centres? Who can prove in a man whose mind is a mixture of insanity and good sense, that the psychic state of insanity does not affect the state of sound sense, and does not diminish it? Who can prove in this man that the

criminal act has been awakened, or provoked by his insanity? How can the medico-legalist say: This series of acts is the manifestation of sane psychic activity; this other series comes, on the contrary, from diseased psychic activity. What is the criterion for the separation of these acts, for the determination of their sane or diseased origin? How maintain that a brain diseased in one of its parts works in the same way as if it were entirely sane. Does the diseased portion leave the sane portion with the same inherent strength it would have if all parts were sane? These are questions, and there are many more, which the theory of partial responsibility raises. All remain unanswered, with good cause, from the most ardent of the defenders of this doctrine. They affirm their idea and that suffices. M. Tarde maintains this partition of responsibility, basing it upon the principle *natura non fecit saltum.* Between complete responsibility and absolute irresponsibility there must be, upon this principle, quite a series of intermediate states, in which responsibility decreases progressively. Therefore there is partial responsibility. The syllogism is faultless—upon the one condition that nature is the author of responsibility. Only that is not so, for responsibility has no independent existence. It is a human conception, a quality given by men to all men living collectively. A man living absolutely alone, in a desert island, would never be responsible, unless we pretend that he would be responsible to that product of the imagination called God. Responsibility, whether in the classic sense, or in M. Tarde's sense, which we shall examine in our next lecture, is only to be conceived in relation to another individual. It is a purely social relation, without any real existence. It exists only in the brains of men who imagine it. We should avoid the frequent and unseasonable use of the principle of *natura non fecit saltum.* In the case of responsibility it cannot be applied. This maxim, on the contrary, applies justly in the case of states of consciousness. In the pseudo-demonstration of M. Tarde, we find a new proof of the very frequent confusion between responsibility and states of consciousness. It is certain that between the states of perfect consciousness and absolute unconsciousness, there is a gradual progressive diminution. Responsibility is not a state of consciousness. The state of con-

sciousness exists; it is the expression of a manner of being of an individual, outside all relation with other individuals. It is a quality essential to all beings of the same species. It is not the product of human imagination, like responsibility. It expresses the permanent authentication of an existing phenomenon. Here then we can justly apply the maxim—*natura non fecit saltum.* It is irrational to apply it to responsibility. We could indeed easily conceive that man might imagine states of absolute responsibility and irresponsibility, without any intermediate links. With MM. Saury, Falret, Corre, Cabadé, and Magnan, besides many others, we think that one cannot admit the notion of insane parts of the mind. A man is either insane or he is not; if he is, then he is irresponsible, if not, he is responsible. Is it admissible that one might conclude in favour of responsibility without being certain that crime has been committed, the cerebral functions being in a state of absolute integrity? Evidently not. Then in order that there may be integrity, it is necessary, as M. Corre has said, that the anamotic substratum shall not have suffered any derangement before the act. To know this dissection would be necessary. Let us remember also that important effects are often produced by very slight lesions.

If it is a case of partial responsibility, with the idea of the separation of the brain into different sane and diseased departments, perhaps applied with a show of reason, then these individuals have several personalities, like the celebrated Félida of Dr. Azam. In the "second" state an individual commits a crime, of which he has perfect consciousness, and which he has slowly elaborated, for a well-determined end. And nevertheless this same individual suddenly passes into a new state—the "first" state—in which there is complete oblivion of the preceding state, but in which there is still consciousness, elaboration, deliberation, appreciation of existing things without any *apparent* derangement. According to a certain school of physicians this individual is responsible in each state. But his responsibility is partial, for this succession of mental states, complete in themselves, but unknown to one another, indicates a disturbance of psychic functions. If one accepts the thesis M. Ball upheld in the case of Euphrasie Mercier, there is partial responsibility. This is undeniable. A

little reflection suffices to show it. Then we arrive at this curious conclusion: An individual in the "first" state sustains punishment for acts committed in the "second" state, of which he is unconscious. Our medico-legalists have not yet arrived at the point of separating the human organism in such a manner that justice can punish the individual in the second state, without reaching the individual in the first state! Though under the direction of eminent lawyers, distinguished theologians, and expert savants, yet we doubt whether the sword of the law will ever find a way to sever the prisoner into two—the first state innocent, the second state culpable.

For the hypnotised the same medico-legalists admit partial responsibility. All suggested acts, they claim, suppose in fact in the agent a certain habitual tendency of mind, in relation with the incriminating act! The school of Nancy is quite of the opposite opinion, and we must confess it is right. The opinion of their opponents, lawyers rather than scientists, does not rest upon any proof, either experimental or observed. They hold the same theory with regard to natural somnambulists. How can a person be responsible for the consequences of a state in which he is unconscious?

"Under the pretext," we repeat, with Corre, "that men generally dream of the things which are the object of their daily pre-occupation, or that have most frequently impressed them, and that the habitual direction of the mind in somnambulists gives their acts a sufficiently precise character, one could determine their evil acts from others, committed during the somnambulistic state, and unprovoked post-hypnotic states! Science which gives voice to such statements will no doubt appear as admirable in enlightened times as that of the Chaldeans and Magi interpreting the future from dreams appears to us now."*

The doctrine of partial responsibility has this marvellous and astounding result that the judge is substituted for the scientist. It is the court which decides, by the penalty inflicted, in what measure responsibility is limited! Let us confess that this is grotesque. This is worthy of such spurious solution, such compounding in the lump (cote mal taillée) as is to be found in the theory of partial responsibility. As Dr. Cabadé has justly said: It is neither scientific nor true. It is, if we reflect ever so little, absolutely inconceivable, for it is irrational. For us it is always

* *Crime et Suicide*, p. 256.

a matter of profound astonishment to see these medico-legalists—and not the least of them—measuring the responsibility of delinquents without any measure. Logically these experts ought to do like Griesinger, of Berlin. He refused to reply to all questions bearing upon the degree of the liberty or moral responsibility of the accused, suffering from any form whatever of insanity. He replied only to this one question: Is the accused mentally diseased or not?

Instead of deciding on partial responsibility it would be much more logical for the medico-legalist to follow the advice of some and decide upon the abnormal condition of the brain of the accused, that is to say, upon a cerebral disease. Then the necessary deduction would be that the mental activity and its manifestations were abnormal, diseased, and that therefore the inculpated is irresponsible. This fatal consequence would be in contradiction to the principle of repression and of example so dear to the lawyers of all rank. Therefore, contrary to all scientific truth, and to all reason they prefer to maintain partial responsibility. This is illogical, but it pleases the magistrates, happy to see that the accused, their veritable prey, cannot altogether escape them.

The minute analysis of arguments advanced to establish and maintain partial responsibility shows that it has really ceased to depend upon free-will. It is based upon social comparison and the conscience that the agent has of his acts. Under the efforts of the alienists, finally of all determinists, responsibility has changed its basis practically, though not in theory. This patent disagreement between the reality and the classic principles of free-will throws difficulty in the way of explaining the doctrine of responsibility. It becomes so vague, so unprecise, that one hardly knows upon what conception it is built up. Many alienists and criminologists still use the term free will when they treat of responsibility, but its meaning is changed. Free will has become synonymous with state of consciousness.

Thus Dr. Corre writes:—

"Man has just enough free will, of personal spontaneity to guide him in the way which permits self-preservation and the maintenance of those belonging to him."*

* *Les Criminels*, p. 140.

This is pure determinism, although the terminology is still impregnated with the theory of moral liberty.

Besides, we have seen that determinism is scientifically proven. Only backward minds, impressed by vague meta-physics, defend the inconceivability which we call freedom of will. It is only an illusion, the cause, alas! of so many errors.

"Man's actual liberty is then in reality," writes Mme. Clémence Royer, "only a difference in the result of his passions, an illusion arising chiefly from instincts, passions, and sentiments, which he has received in heritage from his most ancient ancestry, and that he possesses in common with the animals; to which he has added during thousands of centuries of social existence and of myriads of generations, a crowd of other moral sentiments, ethical instincts, and intellectual passions which, coming to balance with his brutal instincts and animal passions, making him oscillate at every turn, undecidedly weighing the for and against of every motive for action which presents itself, although, at the last, he always decides in accordance with the strongest personal impulsion."*

Man is determined. His volitions are the result of the multifarious environments in which he moves. Historically and theoretically responsibility is based upon free-will, as we have now seen. As the latter does not exist, responsibility vanishes. Scientifically man is the inevitable product of the surroundings in which he lives, and in which his ancestors lived. Logically, he is not responsible for his actions, for he could not help wishing them, the conditions once given. It is only by a collection of fictions that moral responsibility subsists in our codes and our customs. It is only philistinism, the anxiety not to change the judicial system, that scientists very vaguely maintain the principle of free-will, that they defend with more or less precision the idea of responsibility, and that they have imagined such an absurdity as partial responsibility.

The downfall of responsibility, the logical outcome of the absence of free will, leads necessarily to the disappearance of the idea of penality, of punishment. Inevitably a transformation in morals follows. A veritable revolution in human conception becomes the necessary result of the knowledge of the scientific truth—Determinism. From hatred of novelty, custom, mental incapacity some have sought to reclothe, to hold upright the corpse of free will, with the one object of maintaining intangible the prin-

* *Origine de l'homme et des Sociétés*, p. 372.

ciple of penalties and brutal repression. This is the conclusion the above course of lectures leads us to. However, others, less imbued with the classic views, more differentiated in their professional and social surroundings endeavour to arrive at the same result—the conservation of responsibility and penality—by another way, less in opposition to scientific truth. Abandoning free-will as a useless worn out argument—seeing that science has proved it to be an illusion, they seek a new basis for responsibility. The attempt to save free-will has always been an effort to harmonise science and tradition. This time the attempt has been original and interesting.

In the course of time responsibility has been slowly formed, freeing itself from conceptions which collected together successively like layers or vegetable sediments which centuries depose. And thus by a millenary addition, slowly and continuously the idea of responsibility was formed which about the middle of this century was yet powerful and great, the spinal column of our morality, the solid support of our judicial machinery. But if centuries have, by a slow process of aggregation, formed the conceptions productive of the idea of responsibility; they have by a contrary process successively eliminated the causes of these conceptions themselves. In the course of centuries, the sediments were successively carried away in layers. But the idea of responsibility, the last to come, maintained itself, although the conceptions which engendered it had vanished, as well as the causes which provoked them.

So it seemed without basis, without foundation, and then it tremble. It was about to disappear in its turn, as the causes of which it was the effect had themselves disappeared. But some have tried to bolster it up, by giving it the basis which it lacked. The idea of responsibility seems so necessary to certain minds, and even to the best that according to one of them, M. Tarde, it shines for all humanity. It lightens every man coming into the social world; it is not at all a superstition about to recoil before the progress of civilisation, but an exact notion fortified and spread in proportion as civilisation grows and extends.*

* *Philosophie Penale*, p. 83.

VII.

Certain codes found responsibility on voluntariness. Thus the penal codes of Zurich, Hungary, Spain, and Italy declare, in order that there may be imputability, it is necessary that the act be committed voluntarily. The action is supposed to be voluntary, if the agent in committing it, really wished to commit it. M. Ferri opposes this basis for responsibility, for he wishes that to establish it, the intention and the aim of the agent should be considered. And to this effect he says substantially:—

"A hunter aims at a hedge, behind which there is a man, and he aims with the intention to kill him. That is a voluntary and criminal act, and consequently responsible. If he aims without knowing that a man is there, the act is voluntary; nevertheless, if he does not wound the man, there is no crime. If he does wound, the crime is more or less grave; if he kills, the hunter is punished for homicide. The initial act is the same, it is always voluntary; yet nevertheless there may or there may not be responsibility."

The codes too have attenuated the principle of voluntariness. They have made exceptions which do away with the rule. According to article 45 of the Italian Penal Code—

"Nobody can be punished for a crime, if he has not wished to commit the act which constitutes it, *at least which the law does not otherwise lay at his charge*."

In other words voluntariness is indispensable to responsibility, at least when the law does not decide otherwise! In short, a man is punished when the law punishes him!

It seems *a priori* that this basis of responsibility (voluntariness) is independent of free will, for, whether determined or not, man has volitions. In reality it is not so. We do not understand indeed how one can declare the author of a voluntary act responsible who could not help committing the act. If the act is inevitable and fatal it is rational that its author has neither merit nor demerit. He is irresponsible for the act. The individual or collective organism injured can react. It can guarantee itslf by different means against the renewal of similar acts. But then there is neither responsibility nor penality, the case is one

for hygiene and social therapeutics. The idea of responsibility allowed by the codes implies the idea of free-will. The agent is punishable because he has committed a voluntary and vicious act; that is to say, that being able not to do it, being free not to do it, he ought not to have done it.

The German criminalists have abandoned free-will as the basis of moral responsibility. They found it upon liberty of intelligence. Thus M. Berner writes:—

"For imputability, that is to say, penal responsibility, a man must have consciousness of himself, of the exterior world, and developed conscience* of duty. In these moments of intelligence, personal liberty is already comprised, and nevertheless it is not necessary to add it as one of the conditions of imputability."

Also M. Liszt declares:—

"In the idea of penal responsibility and consequently of imputability, that of liberty of will apart from the law of causality is not pre-supposed nor contained, but only that of the determinability of will in conformity with the law, generally by the mediation of the ideas, religious beliefs, morals, law, and prudence. Only in this determinability of the will, the penal law finds its solid foundation, apart from the strife of philosophers."

In short the intelligence governs the will; hence it would be the necessary and sufficient condition for moral and penal responsibility. This theory really supposes that the intelligence is a mental faculty, distinct, altogether separate from the other faculties. Intelligence would then not be determined. Here is an opinion altogether opposed to the facts. The intelligence, being a function of the brain, is determined like all other cerebral functions. It is not free. It is therefore illogical to found responsibility upon a non-existent liberty of the intelligence. The intellectual conditions of the agent might serve as a basis for the treatment to be employed in his case. But they cannot be the *raison d'être* of responsibility. They cannot be, because they are themselves entirely determined.

Among these German criminalists, there are some that confound liberty and the normal state of the intelligence. They speak of liberty and mean simply what is normal. What is the criterion of normal intellectuality? We do not know it. Really there is no standard whereby to measure it. How many diseased seem to

* M. Berner employs the word conscience here in its metaphysical sense, not in the psychological as we always do.

be healthy! Do there really exist in our civilised times any healthy people? There is reason to doubt it.

"The arthritic family," writes Dr. Capitan,* "numbers legion—a Protean legion, covering larvæ of the most diverse kinds, often dissimilated, but existing so universally, *that there is not so to say one living being*, above all in civilised social surroundings, that is not more or less touched with arthritism. The arthritic individual is an invalid, and as such he does not act nor think like a healthy being. His intellectual evolution is troubled. And it is the same with the intelligence of those whose organism is physically more or less deranged, with all those who are more or less affected with any diathesis whatever."

Now such are the great majority of men, not to say all human beings. What, then, is the normal? How establish it? But little reflection shows the impossibility of doing so.

Frequently there is no intellectual difference between the criminal and the non-criminal (Poletti). The idea of the criminal act can arise equally in the two people. It is repugnant to the one, not to the other, who then acts and becomes criminal. A fool can have a very clear idea of crime and commit it nevertheless. Logically such an insane individual would be a responsible being, according to the theory of the German criminalists. In fact, this fool was a delinquent, had conscience of himself, conscience of the exterior world, and conscience of the act and its moral consequences. And yet these criminalists deny the responsibility of the insane! Therefore this theory rests upon a non-existing basis, and contains contradictions.

At the last Congress of Criminal Anthropology (1896), M. Isidore Maus defended the idea of responsibility, basing it upon liberty, but a special liberty, limited by physical (corporal) influences. If the influence of the mind disappears, if the physical tendencies alone prevail, there is irresponsibility.

Dr. Dubuisson is a medico-legalist. He has therefore affinities with the lawyers. This explains his words:—

"The magistrates' mission is to defend the social order against criminals, to punish them, to intimidate them, and he cannot legally part with the weapon put into his hands except in the case of those men whose mental condition renders them inaccessible to fear, that is to say, the insane."

Dr. Dubuisson is even more lawyer than scientist. The idea of responsibility is so dear to him, that it has forced him to find

* *Revue Mensuelle de l'Ecole d'Anthropologie*, Juin, 1897.

another basis than free-will, the fallacy of which he recognises. But we will leave it to Dr. Dubuisson himself to explain his theory. He says:—

"Man is responsible for his acts, although he inherits intellectual and moral tendencies, which *necessarily* impel him in a certain direction . . . for man born perverse, or perverted by a vicious education, is not, *by this fact alone*, drawn into evil, *without any possibility of resisting*, and consequently he is not irresponsible. . . . For poorly gifted as he may be, he is one specimen more or less unfortunate of the species, whose intellectual and moral functions act normally. It is another thing to distinguish between the good and the bad, a purely intellectual operation, and to feel oneself impelled towards the good or the evil—a purely moral phenomenon. The same individual can then understand what is good, and nevertheless do what is bad. . . . Here we have an individual incapable of providing for himself, from a moral point of view, an individual rebellious against all suggestions of a superior order. What remains to counterbalance the evil tendencies which dominate in his brain? Nothing beyond these same evil tendencies, and this would be truly little if there were not penal repression. Punishment comes to the aid of such an unfortunate. Cupidity, sexuality, and destructive instincts seek satisfaction, but intelligence shows the man that the result of these satisfactions would be to rob him of his patrimony, of his liberty or life, that is to say, in the very instincts that he is ready to gratify, and thus it happens, *provided, of course, that the intimidation is sufficient*, that the bad tendencies impelled in a contrary direction equalise themselves and so are neutralised. . . . Man, say the fatalists, ought not to be punished, because he is not capable of resisting his tendencies. We say, on the contrary: man is capable of resisting his tendencies, precisely because he can be punished, because penality exists. Without penality, that is, without intimidation, the perverse would be without any help against their perversity, and could only obey it. . . . In this way I have established from a general point of view, without considering the exceptions (all comprised under mental insanity) that men being capable of intimidation ought to be responsible for their acts. . . . It is because of penality that the insufficiently intelligent man ought to be considered responsible for his acts; this penality being in reality nothing but the compensating influence supplied by society to balance human weaknesses."*

There is no doubt that the fear of suffering is a more or less powerful factor in the determination of acts. According to Beccaria the penality is a susceptible motive opposing crime; according to Feuerbach it is one of the aims of physiological coaction. One of the functions of pain is the counter impulsion to crime, as Romagnosi has said.

"Whatever be the form that punishment has taken under the influence of erroneous beliefs, and wandering of the human imagination, judicial penality

* *Archives d'Anthropologie Criminelle*, 15th January, 1888. M. Magri in his *Nuova teoria generale della criminalita* (Pisa, 1891), also bases responsibility on the capability of being intimidated.

cannot have had any other aim than to change the resultant of motives of action, in such a manner that in the majority of cases, if not always, the fear of the punishment modifies the sense of this resultant, in the individual tempted to commit an injurious act, by attributing to it a negative sign in place of a positive sign." (Mme. Clémence Royer.)*

From the fact that penality is a motive in the determining of acts, can we found responsibility upon it? No. This would be, in fact, a complete reversing of things, for responsibility is supposed pre-existent to penality. There is no punishment when the individual is considered irresponsible. Logically responsibility precedes penality. Consequently the latter cannot serve as a basis to the former. Therefore Dr. Dubuisson's theory has no solid foundation. It amounts to saying: Before acting, the agent knew the result of his act would be penalty. Therefore he could have depended upon it to prevent his action. He was free to wish or not to wish to act; he is responsible. In the last analysis, Dr. Dubuisson's theory necessarily and implicitly supposes free-will. It is therefore a return to the classic theory. The doctrine of this criminalist is entirely illogical. In fact it pretends that man is determined by heredity and environment, and at the same time that when on the point of committing a crime, he is free to act or to resist! This is evidently an absolutely illogical pretension.

If the penalty does not make the criminal refrain, it is because motives *for* the crime are stronger than those *against* it. Then the individual is invincibly led to crime. He has not been intimidated by the penalty. In this case, according to Dr. Dubuisson's theory, he is irresponsible because he could not be intimidated. Then this doctrine leads logically to this amazing consequence: all criminals are irresponsible, because the penalty has not intimidated them; and the only responsible ones are those who do not commit crime!

On the other hand, to establish responsibility the criterion of the capacity to be intimidated is a very bad one, for most fools can be intimidated, notwithstanding M. Proal.† Every day's experience shows that the insane can modify their acts under the influence of penalties or rewards. More or less severe scolding, cellular seclusion, privation of hours of recreation, and being forced to

* *Actes du 2nd Congrès d'Anthropologie Criminelle*, p. 300. 1890.

† *Archives d'Anthropologie Criminelle*, July, 1890.

work, on the one hand, and, on the other, praise, kind treatment, augmentation of wages, progressive concessions of liberty are the present disciplinary means employed with success by those who manage some of the insane. In some asylums, they have gone with advantage so far as to give a percentage to the insane for the products of their work.* Just so the ignorant and fools feel the influence of blame and praise, punishment and recompense. They are, like others, a prey to fear, to pride of self, to emulation. And the doctors, directors of large lunatic asylums, make use, as Falret informs us, of these motives to obtain the restriction of these diseased impulses among their patients "to the last possible limit." Lunatics therefore can be intimidated. From this it follows according to Dr. Dubuisson's theory that they are responsible. And nevertheless he asserts the contrary. What contradictions! Besides, if the penality is a determining motive, we must know the value of this motive. In a general way it seems that the capacity to be intimidated is little developed among men. They do not see at all far into the effects of their acts; they only perceive the immediate results. The criminal, if he has had a mental vision of the punishment—which is doubtful—at the moment of committing his crime believes always that he will escape the punishment, and then he acts. His intimidation is zero. But this is not the place to consider the influence of penality as affecting crimes. This will be the object of our last course in a few years, when we shall have studied together the various forms of crime and criminals.

M. Polettit maintains that to be responsible for a crime "the author should present a minimum of that condition which science shall establish as necessary to constitute a normal man." So the normal man is the only responsible one; but this state of normalness has not yet been fixed by science. It will be. When? M. Poletti does not say. He does not know at all. But this ignorance does not prevent him admitting responsibility henceforth. However, he considers lunatics abnormal, and consequently irresponsible, as also born-criminals and recidivists. What is the criterion of normality? It seems that one of the consequences of

* De Mattos. *La Folie.*

† *La Persona Giuridica nel diritto penale.*

M. Poletti's opinion is that the more the act is out of harmony with the surroundings, the more its author is unlike the average, which really establishes normality here, the more he is responsible. The more a criminal commits crimes, the more he differs from other men, the less he is responsible. But why? How does normality create responsibility? M. Poletti has forejudged the question. So he speaks of a certain "organic and psychic autonomy of man." He means certainly that the individual, on account of this organic and psychic autonomy is free to be either saint or criminal. The normal man alone having this "autonomy" in a state of health, alone possesses this liberty, and is alone responsible. M. Poletti has simply adopted the classic free-will. He has changed the name, clothing it with the term "organic and psychic autonomy." Thus he has imagined himself finding a solid basis for responsibility; we find upon analysis that there is none.

It is the same with the theories evolved by MM. Magri* and Levy Bruhl.† They resemble the preceding, for the basis given by these criminalists is personality.

"Every man," says M. Magri, substantially, "receives from his social surroundings good and bad elements, moral and immoral elements. From the combination of these, results the personality of every man; he will be honest or criminal according to the predominance of social or anti-social elements. Now if the individual can do nothing when his personality is already formed, he can, on the contrary, and he ought to, contribute to its formation by giving prevalence to the moral elements. If he does not do so, and becomes criminal, he is morally responsible."

M. Magri does not say literally that the individual is *free* to make the moral elements prevail in the formation of his personality! He only leaves it to be understood. M. Levy Bruhl is more explicit in this respect.

"Man," says he, "is morally responsible because he is the first origin of his own progress or of his decadence, from the point of view of perfection. It is to him, considered in the essence of his personality, that the decisions ought to be referred. . . . In a word the notion of moral responsibility pre-supposes that of liberty."

Therefore M. Magri, like M. Levy Bruhl, suppose that the individual is free to form his own personality according to his pleasure. How has he this liberty? What is this individual who rules over the formation of his personality? If one reflects ever

* *Studi sull imputibilita penale.* † *Idée de Responsabilité.*

so little, this all really pre-supposes the existence of a soul independent of all its surroundings, capable of choosing such or such elements to form its personality. One falls again purely and simply into the doctrine of free will, which we know to be altogether false. The personality of man, the *ensemble* of the quality peculiar to an individual, is the resultant of all the ancestral, cosmic, and social surroundings. It is entirely determined. Heredity has fixed its tendencies; the cosmic and social surroundings can only modify them. The formation of the personality does not then depend upon the individual. To pretend so is to affirm something which has no sense. But, for an instant, let us admit this absurdity, and then one is led to ask: When is the personality formed? How can one judge whether an individual was or was not psychically formed? To these questions there is no rational reply. This proves the impossibility of basing responsibility on personality.

Professor Binet,* while maintaining that penal legislation ought not to depend on moral responsibility, has sought a foundation for this responsibility! He finds it in the sentiment of indignation. A man is responsible for a bad act when we believe we have the right to fix upon that man the emotion of indignation which his action causes us to feel. At the knowledge of a crime we experience two sentiments, one of indignation and one of pity. If the first prevails, the individual is reputed responsible. If pity predominates, we judge it not punishable. Responsibility is thus based upon sentiment and not upon reason. It seems to us that M. Binet errs in wishing to establish responsibility upon the duel between the sentiments of pity and indignation. Pity is never provoked by crime. Its cause is the idea of punishment arising in the individual as soon as he has knowledge of the crime. If the chastisement does not seem in logical correlation with the act, if it seems too severe, too great, there is pity. The pitying sentiment is therefore the product of the penal reaction and not of the criminal action. As to the sentiment of indignation, it does not produce responsibility, but is, on the contrary, a resultant of it. The indignation caused by an act is the effect of education. Now,

* *Revue Philosophique*, September 1888

it is provoked by the act—when it exists—and brings with it the idea of responsibility. But primarily the act leads merely to a defensive, protective reaction. The man struck, one protects oneself. We have already seen how this idea of responsibility was developed. From it arose the sentiment of indignation. The latter was an effect of the former. First there was a moral coaction for the crime committed, in the group. For those committed outside the tribe, this sentiment came only later, always after the conception of responsibility! It was the idea of responsibility that produced indignation. The same act did or did not provoke indignation according as the agent was judged responsible or not responsible. Rationally, then, moral responsibility cannot be founded upon the sentiments of indignation and pity.

The most original attempt to save responsibility comes from a magistrate, M. G. Tarde.* A distinguished mind and subtle metaphysician, this sociologist considers that the idea of culpability is a necessary moral idea. It is therefore teleologically that M. Tarde was led to his conception. For the good working of society it is necessary that there should be moral responsibility. Now there is no such thing as free-will. Then how establish it? M. Tarde has tried. It is thus with a given object that this scientist has conceived a basis of responsibility, which he has on many occasions expressed more or less clearly. So he says:—

"To deny responsibility is to deny morality."

In this way he understands the scandal raised by the boldness of the determinists who believe in irresponsibility.

"Under the obligation that, after having denied free will, we utilitarians believe ourselves to be to define responsibility as exclusive of all moral ideas, that is to say, to decapitate and destroy it, thus seeming to prove the truthfulness of the partisans of free-will when they say that, once their principle rejected, all ethics break down. This is a prejudice so dear to the spiritual conscience that one cannot hope to see the destruction of this association of ideas, altogether detrimental to morality, so long as one is limited to sapping its assumed basis and has not prepared a new one."

M. Tarde thus avows the aim of the basis he has tried to construct. Irresponsibility, which logically follows from determinism, frightens him to the extent that he views with serenity the alter-

* *Philosophie Penale and Etude Penales et Sociales.*

native "of maintaining by force, imposing the idea of responsibility based upon free-will as a socially necessary dogma, although it be scientifically untenable."

The scientist is almost lost in the citizen. Let all principles go rather than society, says he, for there must not be any scruple when the question is one of such primary importance, as that of responsibility. To believe in it is salutary even though it be an error, a lie. Statesmen, thaumaturgs, historians, theologians have all lied. So scientists can do so too. The fact is true; the conclusion is false. The social lie is injurious even when it seems immediately useful. Also to express such an opinion is no sign of strong scientific mentality. The scientist ought not to try to deceive himself nor others. His specific aim is the search for truth for its own sake, apart from any pre-conceived social idea. When he has once found it, or believes that he has found it, the scientist's duty is to expound it at any cost. If in scientific studies one is pre-occupied with social teleology, it is probable that one will arrive at erroneous results. They will have been falsified by the end pursued, by the intimate personal pre-occupation.

M. Tarde bases responsibility upon two conditions: personal identity and social similitude. It is not necessary to know whether the individual is free or not, but if the individual is real or not. What is personal identity? M. Tarde replies: It is the permanence of the person, it is the personality viewed from the point of view of his durance. His foundation is memory and habit. The cause of an individual's acts is in himself; it is in the brain, the ego. The ego is the fasces of habits, opinions, talents, and knowledge conformable to a slowly changing character. So long as the individual lasts, his personality undergoes transformations or rather variations on a more or less identical theme. The identity is not destroyed, it is attenuated. Everyone has the notion, the sentiment, of his own identity. We are each more or less that which we were yesterday, the day before yesterday, a year ago, ten years ago. In certain bursts of passion, we escape far from ourselves. The personal identity comes and goes, subject to alternative risings and fallings, to periodical fluctuations. In the midst of these undulations, which can be fixed by no formula, we easily recognise the general fact, that after being transformed with rela-

tive rapidity during childhood and youth, the person stops, ossifies, and henceforth modifies very slightly, if at all.

To individual identity, M. Tarde unites social similitude to form a basis for moral responsibility. As we have seen, and as M. Tarde very justly remarks, social similitude was in the past a constitutive element of this responsibility. It did not exist for acts committed outside the social group, or the tribe, while these same acts committed in its midst were punished. Still to-day when Europeans martyrise and reduce African savages to slavery we do not experience the same indignation as these same acts towards Europeans would provoke in us. According to M. Tarde, one indispensable condition to arouse the sentiment of moral and penal responsibility is therefore that the agent and the victim be more or less social compatriots, that they present a sufficient number of original, social resemblances. Being socially similar, the same judgments of disapprobation or of blame are applied in the case of the same acts to all the members of the society. That is they share the same conception of good and evil, they agree in a general way upon the licit and illicit modes of attaining their ends. To be socially similar is to possess an assemblage of exact ideas, judgments, and opinions conformable to those possessed by the majority of the other members of the society.

Responsibility, according to M. Tarde, is the function of individual identity and of social similitude. Free-will is not at all necessary to establish it. These two elements are amply sufficient to give it a solid basis. Responsibility implies a social tie, a collection of moral and psychic similitudes among the beings judged responsible. It implies besides a psychological tie between the anterior state during which the being judged responsible has acted or contracted, and the posterior state during which he is summoned to answer for his act or execute his contract. It is also necessary that there should be a psychological tie between the anterior and posterior state of the plaintiff himself. We understand that individual identity and social similitude can vary in intensity. Consequently, that differing degrees of responsibility correspond to these variations. M. Tarde's theory admits partial and attenuated responsibility. The constructive element

of moral responsibility which is the most important, is individual identity.*

Moral responsibility on the basis given by this distinguished criminalist does not satisfy us at all. The criminal, by nothing than the fact that he is a criminal, has proved that he does not judge, in respect to his crime at least, like the majority of men. The greater number of the ordinary delinquents show notable differences from the average of men. Very often they are lacking in susceptibility or in motive, veritable imbeciles in sentiment and partly also in intelligence.† The common criminal is therefore unlike the mass of the nation of which he is a member, and this dissimilitude is always great. Moral responsibility does not therefore logically exist. To avoid this inevitable consequence of his doctrine M. Tarde pretends that this responsibility exists all the same, for the malefactor blames himself for the act he commits.

"The malefactor," he says, "who in short has breathed the social air since his birth, and who has certainly, by nature, very little inventive genius in himself to make him resist the suggestions of his surroundings, is logically constrained, after having blamed another criminal, to blame himself for committing a like crime. Remember, he must indeed feel an irresistible desire to commit this action, he must indeed have the knowledge of the inherent irresistibility to this desire, he does not cease to judge his act blamable and bad, and to judge himself responsible."

We admit, with M. Tarde, that sometimes the criminal judges himself responsible for his act. But this fact is no proof of the reality of responsibility. The delinquent believes himself responsible because of the heredity and education which have implanted this belief in him. With the majority of his co-associates, he possesses this idea, but that does not prevent that in a number of other points he differs from them. He is dissimilar. Besides M. Tarde himself states that there are many cases where it is difficult to know exactly if the author of a reprovable act belongs to the same society as his judges, if he recognises the deep community between them. And nevertheless in criminal law the solution of this problem is fundamental. M. Tarde considers that certain tumults are crimes, others are incidents of warfare. He gives no criterion to establish these differentiations. Thus he considers that the Commune with the fusillade of the hostages

* *Philosophie Pénale*, p. 84, etc.

† De Sanctis. *Archivio di Psychiatria*, vol. xvii., fasc. v. vi.

was a crime. Versailles, on the contrary, with its bloody repression, was not criminal. The Communards belonged to the same society as the Versaillais, therefore there was social similitude, and consequently responsibility! This opinion of M. Tarde's is erroneous. Between the Communards and Versaillais the social differences were considerable; they exceeded the similitudes. The proof of this lies in the attitude of the Communards before the Council of War. They considered themselves as belligerents, rebels, and not as criminals. They did not hold themselves guilty.

According to M. Tarde's theory, political criminals would be logically irresponsible. They never consider themselves guilty. They acknowledge themselves the authors of the acts, but for them the acts are good and praiseworthy. They are therefore unlike the society where they live when this society blames and prosecutes the very acts in which they glory. The irresponsibility of political criminals as a consequence of his theory has not escaped M. Tarde. That would contradict the end he pursues, this is penality in the interest of society. Thus he declares that penal responsibility ought often to vary from moral responsibility. He maintains therefore the right to chastise, yea, even to kill, delinquents whom he does not consider responsible. Here, this criminalist admits the utilitarian theory as a basis for punishment, and yet he opposes this very doctrine.

So it would be necessary for M. Tarde to fix the limits of the society where the delinquent is justifiable because he is like his fellows. There is a professional morality and a class morality. The peasant robbing a townsman, the military violating a civilian commit crimes which seem to them insignificant, or which, at least do not seem so serious as if they had robbed another peasant, or violated another military man. Then these delinquents are judged by their peers, by their fellows belonging to the same social group as themselves, or else they will be justiciable by other little social groups forming the whole society from which they differ.

One of the elements of which moral responsibility is a function, social similitude seems to us then very difficult to determine. It is vague and shapeless. Certainly all the individuals of the same social group, such as a nation, have points in common; they

resemble one another, whatever may be their mental state. But this similarity is not pronounced. If we examine them nearer, if we scrutinize them carefully, we perceive profound differences, according to the classes, professions, or individuals. In many respects criminals are similar to the average of mankind. In not fewer respects they differ from them. They are at the same time members of the society and strangers to the society where they live. It is impossible to fix the limits where the similarity ceases and the differences commence. The criterion of social similarity cannot be established with certainty. From this it follows that responsibility based upon it rests really upon a very vague, fluctuating conception, altogether insufficient logically to sustain the principle of moral responsibility.

The other constitutive element of this responsibility, individual identity is not less vacillating, not less impossible to determine with certainty. Indeed this personal identity does not exist. The individual is in a state of perpetual change. From minute to minute his elements are modifying. Subject to the influences of all his surroundings, he is never identical to that which he was an instant ago. In order to sustain the reality of individual identity, M. Tarde is obliged to affirm that: It is essential for us to recognise the supremacy of a central element in the brain, always the same throughout its continual modifications, and whose intimate states constitute the normal person. He is obliged to create an extremely coherent ego, existing beyond the individual, a sort of individuality apart.

"The ego," says he, "in fact is to the brain that which the State is to the nation; the State, that is, to the directing personnel, which commands and indicates, which being the depositary of the traditional *lex terræ*, the institutions and principles, the powers and enlightenment accumulated by its predecessors, but which it continues and enlarges by its decrees and directions, by its conscious and voluntary acts of every day converted in the course of time into superadded, administrative habits."

Thus the ego of the individual has a distinct existence independent like that of the ruling personnel in a nation! One might imagine the disappearance of the nation, with the exception of one part; the ruling personnel which has a separate existence. One could not imagine an individual disappearing without the disappearance at the same time of his ego. The ego has ex-

tremely little cohesion and unity! Formed by the totality, the aggregate of our tendencies, instincts, desires, and conceptions, it varies every instant as it is modified, augmented, diminished in these tendencies, desires, conceptions, etc., in the innumerable influences of its environment. To admit the supremacy in the brain of a central element, *always the same*, throughout the continual modifications is an anti-scientific conception, imagined merely in order to constitute a personality all of a piece, always identical to itself. In reality, the individual is never identical to himself. Individual identity, this principal element of moral responsibility, is divested of all scientific value. It is uncertain, undulating, signifying nothing at least that is not limited to simple attribution. We decide then upon the responsibility of Peter simply because Peter is the author of the incriminating act, without troubling ourselves about his psychic condition. This is attribution pure and simple. It is to return to responsibility as understood by primitive and savage peoples.

Accepting M. Tarde's doctrine we are led to ask: How can we know whether the individual is identical to himself or not? What will be the criterion of this identity? M. Tarde says himself that "identity signifies always change after all, but an insignificant change." Up to what limit may this change take place, without ceasing to be insignificant? How say: This man is identical, this other is not? It is inadmissible to be satisfied with appearances, and that it should suffice that the individual *appears* to be identical, as M. Tarde seems to admit. We must have exact answers to these questions. M. Tarde does not give any, and cannot, for there are none to be given.

It is not enough to have the idea of one's identity, to prove its existence. We have seen in our first lecture that the consciousness of free will is no proof of its existence. The same demonstration applies to the consciousness of individual identity. It is useless to repeat it. Individual identity does not exist. It is a product of the imagination of M. Tarde, who had need of it to maintain moral responsibility, in his opinion so necessary to society. This responsibility which, as he feared, must fall with the disappearance of free-will. In short, M. Tarde substitutes the idea of personality in place of free will to find a resting place for this

indispensable, sacro-sanct responsibility! These two conceptions of personality and free-will are both equally obscure and imaginary. Therefore M. H. Jolly rightly regards this substitution as useless. He prefers to remain with the old dogma of free will.

"In M. Tarde's view," writes another magistrate, M. Fabreguettes, "all his subtle reasoning amounts simply to saying that it is not permitted to an associate to break the contract which binds him to society, without being punished. The man who ceases to resemble other men and becomes dangerous by the affirmation of his personality is guilty. Therefore this theory resembles the utilitarian theory."

M. Fabreguettes is to some extent right. If we analyse well the doctrine of responsibility based upon individual identity and social similitude, we see that it is entirely utilitarian. In numbers of cases, the agent would be theoretically irresponsible, and practically M. Tarde makes him responsible. We have seen this in the case of political criminals. We might find it so for alcoholic and morphia maniacs, etc. In their chronic state these people are identical to themselves, but there is no social similitude. Logically they would be irresponsible. In the violent state they are similar socially, but not identical to themselves. Therefore they are irresponsible. Nevertheless M. Tarde decides for penal responsibility. He considers this useful, and that suffices him. In the last analysis M. Tarde's is a form of the utilitarian theory. There remains in it but a phantom of responsibility! If the identity of the subject is a necessary element in responsibility, the lunatic is responsible, as the Abbé de Baets has very justly noted. The intellectual derangement which makes a man a lunatic belongs as much to the subject as the moral derangement which makes him a criminal. Both are a psychic disorder of the cerebrality.

From all this criticism of M. Tarde's original conception, it appears, we think, that it cannot be admitted. Neither social similitude for individual identity combined can serve as a basis for moral responsibility.

In the end we find that the various attempts to reconcile science and tradition have all failed completely. The most original and most subtle, that of M. Tarde cannot bear minute examination without being confounded with simple doctrine of utilitarianism, that is to say, without disappearing completely. This failure of

all efforts to base moral responsibility upon anything else than free will proves that Schopenhauer was right when he wrote:—

"Responsibility supposes the possibility to have acted otherwise, and consequently liberty."

So we say, with the Abbé de Baets:—

"He alone can be held responsible for his actions who decides upon them by his own choice."

But we add:—

"No one chooses his own actions, for all men are inevitably determined."

Although the contemporary philosophic movement in its generality denies free-will; although all science affirms universal determinism with all its consequences, the magistrates will not disarm. In spite of all, they wish to maintain intact the old-fashioned responsibility, the right to punish "which cannot help being a simple function of society," as one of them has said. Like M. Fabreguettes they affirm always that the morality of the future cannot be founded exclusively upon science, for at bottom it is quite distinct from it. In spite of all the scientific demonstrations, in spite even of evidence, the classic criminalists continue to repeat M. Caro's declaration:—

"That which is really to be feared, is that by all these accumulated negations we arrive at destroying the idea of responsibility in the consciences of individuals. The evil is already done in the conscience of the masses. Terrible examples have shown us that the crimes of crowds do not seem to be crimes, and that the collective responsibility is not heavy to bear. The evil would be irreparable if it extended to individuals; a people would be near perdition the day when the majority of the citizens who composed it saw no more in moral responsibility than a remnant of superstition, and in penality nothing but a legal artifice imagined to protect certain interests."

And these criminalists add:—

"Down then with all these disastrous ideas.. The spiritual theory of punishment with certain constitutions, the amendment of the guilty, these are the only truths."

These only truths are in reality absolutely false. If more and more we consider moral responsibility as a superstition, the perdition of the people will in no wise result. But it should follow that there should be no fear to cry when: moral responsibility is a superstition; it does not exist. We must proclaim it, for it is the truth. It is so much the truth that Dr. Dubuisson, in spite of his desire to save moral responsibility, writes:—

"We shall march slowly perhaps, but *surely*, towards this limited ideal

presented by some as the only logical solution of present difficulties; the suppression of penality on account of universal irresponsibility."

Yes, it is certain that humanity marches towards this end at which already those determinists have arrived, who do not fear to draw the logical conclusion of their doctrine. In fact, the necessary consequence of determinism is the irresponsibility of the individual. We are determined, that is to say, we are as we cannot help being, all conditions given. We are the fatal resultant of the multifarious surroundings among which we live. Rationally it follows we cannot reproach anybody for being as he is, for he cannot be otherwise. We ought no more reproach an individual for his mental deficiency than for being blind, hunchbacked, or deformed. These are psychic or physical conditions, which far from depending upon the individual verily form the individual. As Mme. Clémence Royer has justly declared:—

"A human being is not more responsible for his virtues than for his vices; it depends no more upon himself to be Saint Vincent de Paul than Lacenaire, Regulus, than Catalina, Newton, or the last of the fools."

So the anthropologists, such as MM. Dally and de Lapouge, when they maintain that man can no more be morally responsible for his acts than for his maladies, which he has brought with him in his birth, or that he has contracted in the course of his existence.

Universal determinism, being the scientific truth, it follows that moral responsibility does not exist. It cannot be conceived. It is, in fact, contrary to human reason to consider automatons responsible, being inevitably obliged to be as they are. The rock which in breaking away crushed whoever is on its path, is not considered responsible. Nor is the tiger responsible who kills a man. We ought no more consider the man who acts responsible, for he is as much an automaton as the tiger, or the rock. General irresponsibility, such is scientific truth.

It shocks even the convinced determinist. He rejects moral responsibility indeed, but, like MM. Corre and Cabadé, he does not proclaim it clearly, or, like M. Debierre, he declares but contradicts himself. So the latter desires implacable repression of social defence and inexorable legal responsibility, adding:

"in the repression it is necessary to include the irresponsibles!"

Deny moral responsibility and hold some responsible nevertheless! The logical consequence of general irresponsibility frightens him, and he dare not face it. He dare not conceive the suppression of penality. He dare not say, with Mme. Clémence Royer:—

"It is not at all the fault of the viper to have venom. It is useful to it for its defence. It is nevertheless its specific crime, and we crush it without pity, for the sole reason that it can injure one of the representatives of our species. It is quite legitimate to wolves and lions to have sharp teeth, a quality of the carnivoræ; but it is also a right of legitimate defence for man to destroy this species, wherever he establishes his own. It is with *apparent* legitimacy that humanity exercises, and has always exercised, a negative selection, more or less rigorous, against those of his kind who violate the specific law, being a cause of injury to his social groups, and has acted towards them as towards a strange species."

The collectivity and the individual when injured experience the need to react against the injury. And this reaction to suppressive upon the delinquent, or preventative of other similar acts. From this need of reaction, this reactivity, to employ M. de Roberty's correct and precise expression, is born the law and duty of society to protect itself from its criminals, by preventing the delinquent from committing other crimes. This purely utilitarian theory of social defence is shared by Littré who has written:—

"By the constitution of the human mind society has a right upon the malefactor. The latter ought to be treated like a defective tree that one cures, or that one even roots out in certain cases."

This is the opinion too of M. A. Naquet who believes in social responsibility, that is to say, the right for society to protect itself from its criminals.

"Just as," says he, "a hunchback is removed from the army, so in the name of social conservation we ought to exclude the actively perverse from society."

Salus populi suprema lex esto, such is the maxim of these philosophers and criminalists, among whom we meet with numbers of believers in free-will, like Cesar Silio.* Obliged to abandon the criterion of the classic school, he takes refuge in social responsibility, and affirms, with the Italian positive school, the grounds chiefly defensive of penality. Utilitarianism is the basis of their social responsibility, which has nothing but the name in common with the true, classical responsibility.

* *Crisis del Derecho Penal.*

Society, M. Ferri declares, has the right to defend and preserve itself. This is the

"sole positive ground for penal or defensive administration, apart from all idea of an ethico-religious or sentimental mission."

Man is *responsible* because he lives in society, and for no other cause than this social existence. He who does not live in society has no rights nor duties. He renders account to nobody of his acts, at least without the idea of homage to some God.

"Man is responsible exclusively because in the life of society, every act produces effects and reactions, whether individual or social, which rebound upon the author of the act, and are useful or injurious to him, according as the action itself is useful or injurious to society."

This social responsibility is upheld by the majority of psychologists, alienists, sociologists, and positive criminalists, such as Stuart Mill, Despine, Dally, Maudsley, Spencer, Lombroso, Lacassagne, Guyau, De Greef, Le Bon, etc.

Every action produces reaction. Every agent therefore feels the natural and social consequences of his acts. He responds to them, and he is responsible for them *vis-à-vis* to the cosmic or social environment by the fact alone that he is the author of his acts. The positive Italian school arrives thus at responsibility based upon the simple attribution of fact. Such it was primitively. Logically with itself it transfers from the penal order to the civil order the general Anglo-Saxon conception which states with Holmes—

"that every man acts always at his own risk and peril, whatever may be the state of his conscience."

From this, lunatics, the insane of whatever kind, are considered by the positive school as socially responsible.

To speak the truth, this philosophic school denies all responsibility. "To depend upon responsibility for the public health is really to suppress it." Such is the opinion of M. Tarde, and we quite agree with him. This social responsibility is a phantom of responsibility. It bears the name, but is not at all the same thing. It would be better to choose another term quite distinct, which would prevent all confusion. Much does arise, as is to be seen, for example, in the *Sociologie Criminelle*, by Ferri, where the term responsibility is used alternately in the classic and in the positive sense. It is not simply a question of words. It is a

question of ideas, for penality is the consequence of classical responsibility, and social hygiene of positive responsibility. The retaining of the word "responsibility" in the terminology of the Italian schools leads to that of the word "penality," although the conception of classic penality differs from that of positive penality. The right to punish becomes the right to preserve oneself. It is a function of the vital conservation of the social organism. As M. Dimitri Drill has explained at several congresses of criminal anthropology, "The Lombrosian school entirely renounces in principle the law of retaliation, taken in its different modifications as a final and principal end, and as the basis of all judiciary punishment. This school does not recognise in such punishment any other basis or aim than the necessity to protect society against the untoward consequences of crime. From this point of view the distinctive character of punishment is considerably changed, and the idea of punishment itself becomes more rational. It is no more a question of making a man suffer for causing suffering or to satisfy a feeling of vengeance. The conception of vengeance, of satisfaction and intimidation is more in place with the basis and aims of responsibility. They are replaced by the conception of salutary measures destined to reform and remake the man.

It is evident that, although employing the same terminology as the classics, the followers of the positive school mean quite other things. So we consider that MM. Carmignani and Berenini are right not to speak of responsibility of crimes or penalties, but of offence and defence. And M. Ferri himself, on account of this defective terminology contradicts himself when he maintains alternately that "society has the right to punish,"* and that "society has no right to punish." There cannot be a judge capable of appreciating the culpability of his own brother.†

To avoid errors of interpretation, to make the ideas precise, it would be well, as moral irresponsibility is a certainty, to adopt another vocabulary and abandon the expressions penality and social responsibility either penal or legal.

The individual who commits acts disturbing to the society in which he lives, necessarily provokes there a need for reaction. This is fatal, inevitable. Individual or collective activity engen-

* *Sociologie Criminelle.* † *Congrès d'Anthropologie Criminelle*, of 1896

ders individual or collective reactivity. To different modes of action respond various modes of reaction. We have no need of the conception of responsibility based upon free-will, a liberty of intelligence which does not exist, based upon an individual identity of which it is impossible to establish a criterion. It is sufficient that there should be discord in action to produce the consequence whether of repression or prevention. The individual or social reactivity is the inevitable consequence of individual or social activity. It manifests itself by the proceedings for correction, preventive, or suppressive treatment if the acts resound in their surroundings, and if they have been judged injurious by the majority of the members of the society.

We consider then that it is necessary to substitute the term social reactivity for social responsibility, because the idea intended under the latter term does not correspond to the common classic idea of responsibility. Social reactivity has for its necessary product in place of penalties or chastisements, a preventive treatment, a hygiene and social therapeutics appealing further than to the agent, to the very causes of the discordant acts. This hygiene and this therapeutics of society we cannot yet treat of. We must first study the criminals, the etiology of crimes, and review the various present measures taken against criminals. Then alone we shall be able, knowing the cause, to establish a hygiene and social therapeutic. To-day it must suffice us to have shown that there is no such thing as moral responsibility, and that all men are irresponsible.

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